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REPORT

OF

THE COMMISSIONERS

ELECTED TO

PREPARE A CODE OF LAWS

FOR

THE TERRITORY OF OREGON.

SALEM, OREGON:
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1853.

25796

REPORT

Of Commissioners elected to prepare a Code of Laws.

To the Legislative Assembly·

WE, the commissioners elected to prepare a code of laws for Oregon Territory, respectfully report, that shortly after the close of the last session of the Legislature, we entered upon the discharge of the duties imposed upon us by the act creating the board of commissioners, and we now submit the foregoing compilation as the result of our labors. We are well aware that in a work of this magnitude, prepared as it was in the brief space of time that elapsed between the last and the present session of the Legislature, many errors and imperfections must necessarily exist. We ask, however, that it may receive the careful and candid consideration of the Legislative Assembly at its present session, and if approved, that it may be adopted with such amendments as may be thought proper.

In preparing this compilation, we were of opinion that the act creating the board of commissioners, did not simply authorize us to make a revision of the statutes now in force, but that it required us to prepare a full and complete code. The present report is designed to accomplish this end, and to substitute a uniform and connected system of statutory laws for the confused and uncertain one that now exists in the territory.

It will be perceived upon an examination of our report, that we have adopted some of the statutes now in force; others have been very materially changed, and not a few have been wholly supplied. To point out all the alterations and additions which we have made, or to give the reasons therefor, would be quite impossible, unless at very great length. We have therefore concluded to submit the code which we have prepared without making any further remarks upon it, trusting that upon a close examination, it will be found such as the Legislative Assembly may approve and adopt.

All which is respectfully submitted.

JAMES K. KELLY,
D. R. BIGELOW,
R. P. BOISE.

REPORT.

AN ACT

To establish a Probate Court, define its duties, and powers.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That there shall be elected by the qualified electors, in each of the organized counties of this Territory, at the next general election, one judge of probate, who shall have the qualification of a voter. The person duly elected and qualified, shall hold his office for three years, unless sooner removed for mal-conduct in office, and until his successor be elected and qualified.

SEC. 2. That the court established by this act, in each of the counties of this Territory, shall be styled "The Probate Court of the county of ———," with such jurisdiction as may be prescribed to such courts by the laws of the Territory.

SEC. 3. That all elections for judges of probate shall be conducted and returns made, as prescribed by the act regulating general elections in this Territory; and the clerk of the board of county commissioners shall issue a certificate of election to the person duly elected under the provisions of this act.

SEC. 4. Every person elected a judge of probate in this Territory, shall, within fifteen days after receiving his certificate, take and subscribe the following oath:

I, E. B, do solemnly swear (or affirm, as the case may be), that I will support the Constitution of the United States, and the laws of this Territory; that I will administer justice without respect to persons; and faithfully and impartially discharge and perform all duties incumbent upon me as a judge of probate, according to the best of my abilities.

Signed, E. B.

Territory of Oregon, county of ———, ss.

Subscribed and sworn to before me, this, ——— day of ———, 18—.

G. D.,

Clerk of the board of county commissioners, in and for said county.

Said oath shall be endorsed on the certificate of election, and filed, together with the certificate, in the office of the clerk of the board of county commissioners for the proper county; and every person elected a judge of probate shall, at the time of filing his oath of office with the clerk, enter into bonds to the board of commissioners for said county, with good security, to be by the said commissioners approved, in the sum of five thousand dollars, conditioned that he will pay over all moneys that may come into his hands by virtue of his office, and deliver over to his successor all files, papers and books belonging to the probate office; that he will keep in good order the records of his court, with faithful and correct alphabets and indexes to the same, and perform all other duties belonging to his office; said bond shall be filed in the office of the clerk of the board of county commissioners. And any person aggrieved by a breach of the conditions thereof, may, by suit upon the bond in the district court for the proper county, have judgment against the judge of probate and his securities, for such sum as he may show himself entitled to, with costs and interests, at the discretion of the court.

SEC. 5. No sheriff, coroner, clerk of the district court, county commissioner, or clerk of the board of county commissioners shall be eligible to the office of judge of probate.

SEC. 6. That when the office of judge of probate shall become vacant by death, resignation or otherwise, the sheriff shall issue his proclamation to the voters of the county, in which he shall set forth the vacancy that has occured; the time and place, or places that the election will be held to fill such vacancy, which time shall be at least fifteen days after the publishing of his proclamation, and three copies of said proclamation shall be posted up in each township or election precinct of the county.

SEC. 7. That if there be a tie between two or more persons, the sheriff shall order a new election as prescribed in the foregoing section.

SEC. 8. The judge of probate for each county, shall have and possess the following powers: Original jurisdiction in all cases relating to the probate of last wills and testaments, the granting of letters testamentary and of administration, and revocation of the same, the appointing or displacing guardians over orphan minors, spendthrifts, and persons of unsound minds, and the binding orphan minors as apprentices; the settlement and allowance of all accounts against estates, and of executors, administrators and guardians; the hearing and determining all disputes and controversies respecting wills; the right to executorship, administration or guardianship, and respecting duties and accounts of executors, administrators or guardians; the hearing and determining all disputes and controversies between master and apprentice; the hearing and determining all suits and other proceedings instituted against executors and administrators upon any demand against the estate of their testator or intestate.

SEC. 9. His jurisdiction shall extend over the estates of all persons deceased, who, at the time of their decease were inhabitants of, or residents in the same county, and all who shall die without the territory, leaving any estate within said county, or whose estate may afterwards be found in said county.

SEC. 10. He may, upon the application of the party or parties interested, grant administration on the estate of any person who, by due course of law, shall be under sentence of imprisonment for life, in the penitentiary, whether by commutation of a previous sentence, or otherwise.

SEC. 11. He shall have authority to cause to come before him by citation, all and every person or persons whom he may deem it necessary to examine as witnesses, or who as executors, administrators, guardians or otherwise, shall be entrusted with, or in any way accountable for any lands, tenements, goods or chattels belonging to any minor, orphan, or person of unsound mind, or the estate of any deceased person; and may examine on oath or affirmation, such person or persons, touching any such estate or guardianship, before him; and any such person summoned to appear before him, who shall refuse so to appear, or when present shall refuse to be examined as a witness, touching said estate or guardianship, shall be liable to be punished as for contempt.

Sec. 12. He shall have jurisdiction in all matters relating to the estates of such persons as are under guardianship, and the settlement of the same; and his jurisdiction shall extend to whatever else may by law rightfully come under his cognizance; and when a case shall originally be within the jurisdiction of the probate court of two or more counties, the court which shall first take cognizance thereof, by the commencement of proceedings, shall retain the same throughout exclusively.

Sec. 13. He shall have authority to issue whatever process may be necessary for the discharge of his official duties, and he shall have a seal of office.

Sec. 14. Sheriffs, their deputies, coroners and constables shall serve and execute all legal warrants and processes, by him directed to them.

Sec. 15. That the court established by this act, shall be a court of record, and shall keep just and faithful record of its proceedings, and the judge thereof shall have the care and custody of all files, papers and books belonging to the same, and record all wills and other instruments in writing, required by law to be put on record.

Sec. 16. Contempt of his authority or office, in any cause on hearing before him, may be punished in like manner, as such contempt may be punished in the district court.

Sec. 17. The judge of probate for each county in this Territory, shall hold a court at the seat of justice, or usual place of holding the district court in such county, on the first Tuesday of every month.

Sec. 18. When any judge of probate shall be interested as heir, legatee, creditor, debtor, or within the degree of kindred, by means of which by law he might by any possibility be heir to any part of the estate of any person deceased, leaving property to be administered in his county, such estate shall be settled in the probate court for the most ancient adjoining county. If his interest commence at any time after he shall have regularly assumed jurisdiction of such estate, farther proceedings therein shall be transferred to the probate court held in the most ancient adjoining county.

Sec. 19. The will of any such deceased person may be there proven or administration granted, as the case may require, and all subsequent proceedings had thereon, in like manner as if the deceased had died in that county.

Sec. 20. No judge of probate shall have a voice in judging and determining, nor be attorney or counselor, in or out of court, in any civil action whatever, which may depend on, or relate to any sentence or decree made by him in his office; nor be attorney or counselor in any civil action, for or against any executor, administrator, or trustee under any last will and testament, or guardian as such within his county.

Sec. 21. All oaths required to be taken in relation to, or in anywise pertaining to any proceeding in the probate court, shall be administered by the judge of probate, and by him recorded or filed, as the case may be, in his office.

Sec. 22. Any person aggrieved by any order, allowance, sentence, decree or denial of any judge of probate, or any other act in his official capacity, may appeal therefrom to the district court, within and for the same county; *Provided*, the appeal be taken within twenty days from the date of the proceeding appealed from.

Sec. 23. The appellant shall make his bond to the adverse party for such sum and with such security as the judge shall approve, conditioned for the prosecution of his appeal with effect at the next term of the district court for the same county, and in case he fail in such prosecution, to pay all costs and damages already accrued, and such costs as may be taxed against him by said district court. Said bond shall be filed in the probate office, for the use of the adverse party.

Sec. 24. That in case of any controversy wherein an insane person, or other person under guardianship is a party, the probate court may, at its discretion, grant an appeal on the part of the ward, without bond being given as aforesaid; *Provided*, that all other requirements in relation to appeal be complied with. This act shall not be so construed as to require any executor or administrator to enter into bonds, to entitle him to appeal.

Sec. — Appeals shall be cognizable at the next term of the district court, which shall be holden after the expiration of twenty-four days, after such appeal shall have been allowed, and the appellant shall file the reasons for his appeal with the court appealed from, and shall serve all the parties who have appeared before the judge of probate in the case, with a copy of such reasons, under the official signature of the probate judge, fifteen days before the sitting of the court, to which the appeal is made.

Sec. 25. When an appeal is granted, the judge of the court appealed from shall transmit to the clerk of the district court, under his official signature, a transcript of the records and proceedings relative to the cause, together with the original papers relating thereto.

Sec. 26. After an appeal is allowed, the bond filed, and the reason served in compliance with this act, all farther proceedings in relation to the order, decree, sentence, or denial appealed from, shall cease until the determination of the court or courts above be heard from.

Sec. 27. The court above may reverse or affirm, in whole or in part, the sentence or proceedings appealed from, and may make such decree or order thereon, as the judge of probate should have made, and shall remit the case to the court from whence it came, for farther proceedings.

Sec. 28. If, upon hearing an appeal in the court above, any question of fact shall occur that is proper for a jury to try, the court may, at its discretion, cause it to be tried upon an issue to be formed for that purpose, under the direction of the court.

Sec. 29. In all cases that are contested in a probate court, the said court may, at its discretion, award costs to either party, to be paid by the party in default, and may issue execution for the same in like manner as such executions are issued out of the district court.

Sec. 30. If any person required to make oath to any instrument in writing, which is to be used before a judge of probate, shall be unable to attend by reason of infirmity or otherwise, or shall reside without the county where the court of probate is holden, it shall be lawful for said judge, by commission issued for the purpose, to authorize any disintevested justice of the peace to administer such oath, who shall return a certificate thereof to the judge, together with the commission, and instruments in writing annexed.

SEC. 31. No probate of any last will, nor administration on the estate of any person deceased, shall be originally granted, after the expiration of twenty years from his decease.

SEC. 32. Judges of probate shall have the following fees:

For granting letters of administration,	$2,00
For probate of will or testament,	2,00
For granting letters testamentary,	2,00
When the same are contested,	5,00
Taking bonds of executors and administrators,	3,00
Taking bonds in other cases,	2,00
Hearing complaints against spendthrifts and lunatics,	2,00
Appointing guardian,	1,00
Decree for probate of a will,	1,00
When contested,	2,00
Decree for settlement of an estate,	1,50
Order of distribution,	1,50
Examining inventory of appraisement or bill of sale, and filing the same in office, each,	1,00
Every writ or process under seal,	1,00
Each order of court on record,	1,00
Examining accounts, each 100 words, counting two figures for a word,	25
Warrant to appraise or divide an estate,	1,00
Issuing commission,	50
Allowing appeal,	75
Approving securities in bonds, each,	25
Assigning personal estate to widow,	1,00
Assigning dower in real estate,	1,00
Refusing letters of administration, or probate of will, to be paid by the losing party,	1,00
For every continuance, when asked by a party,	50
Order for the sale of personal estate,	1,00
Certificate of necessity for the sale of real estate,	1,00
Order for partition of real estate,	1,00
Allowing reports on the accounts of executors or administrators,	1,00
Extending letters of administration,	50
Decree, respecting the probate of will or codicil,	1,00
Acquietus,	1,00
Filing each paper,	15
Administering an oath,	50
Recording all papers by law required to be recorded, for each hundred words,	37
Order for the apportionment of an insolvent estate among the creditors,	1,00
Acknowledgement, with seal,	50
Entering appointments of executors, administrators, guardians, or other appointments necessary,	1,00
Issuing letters of guardianship,	1,00

Issuing citation to executors, administrators and guardians,	$1,00
For hearing each contested case, to be taxed as cost against the party in default,	5,00
Copies of papers and records, each one hundred words,	30

One hundred dollars per annum, to be allowed by the county commissioners out of the county treasury, and paid quarterly.

AN ACT

Respecting Executors, Administrators, and the distribution of real and personal estate.

CHAPTER I.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That upon the decease of any inhabitant of this territory, letters testamentary, or letters of administration on his estate, shall be granted by the probate court for the county, in which the mansion house or place of abode of the deceased was situated, at the time of his death. If he had no mansion house, or place of abode in this territory at the time of his death, and be possessed of lands in this territory, letters may be granted in the county in which such land, or a part thereof lies. If the deceased had neither mansion house, place of abode, nor lands in this territory at the time of his death, letters testamentary or of administration, may be granted in the county where he died, or in which the greater part of his estate may be. If he died out of this territory, having neither mansion house, place of abode, or lands in this territory, such letters may be granted in any county where his estate or a part of it may be.

SEC. 2. All orders, settlements, trials and other proceedings intrusted by this act, to the probate court, shall be had or made in the county in which letters testamentary or of administration were granted.

SEC. 3. No judge of probate in his own county, and no person under twenty-one years of age, or of unsound mind, shall be executor or administrator; nor shall the executor of an executor, in consequence thereof, be executor of the first testator.

SEC. 4. Letters of administration shall be granted:

1. To the widow or next of kin, or both, as the judge of probate shall think fit, and if they do not voluntarily either take or renounce the administration, they shall, if resident in the county, be cited for that purpose by the judge.

2. If persons so entitled to administration are incompetent or evidently unsuitable for the discharge of the trust, or if they neglect without any sufficient cause, for sixty days after the decease of the intestate, to take administration of his estate, the judge of probate may grant letters to one or more of the principal creditors, if there be any competent, and willing to undertake the trust.

3. If there be no such creditor, the judge of probate shall commit administration to such other person as he shall think fit; *Provided however,*

4. That if the deceased were a married woman, administration of her

estate shall, in all cases, be granted to her husband, if competent, and willing to undertake the trust, unless by force of a marriage settlement, or otherwise, she shall have made some testamentary disposition of her separate estate, or some other provision which shall render it necessary or proper to appoint some other person to administer her estate; *and provided, also,*

5. That if the deceased were an alien, and left no widow, or next of kin in this territory, administration of his estate shall be granted to the consul or vice-consul of the nation to which he belonged, if there be any in this territory, in preference to his creditors.

SEC. 5. After the probate of any will, letters testamentary shall be granted to the persons therein appointed executors. If a part of the persons thus appointed refuse to act, or be disqualified, the letters shall be granted to the other persons appointed therein; if all such persons refuse to act or be disqualified, letters of administration with the will annexed shall be granted to the person to whom administration would have been granted, if there had been no will.

SEC. 6. When there are two or more persons named co-executors in any will, none shall have authority to act as such, or intermeddle, except those who give bond.

SEC. 7. Every executor or administrator, before entering upon the execution of his trust, shall give bond, with sufficient sureties, resident in this territory, in such sum as the judge of probate shall order, payable to the territory of Oregon. The form of the bond shall be joint and several, and the penalty shall not be less than twice the value of the estate; which value shall be ascertained by the probate judge, by examination on oath of the party applying, and of any other persons he may think proper to examine. The bond shall be conditioned that the executor or administrator shall faithfully execute the duties of his trust, according to law.

SEC. 8. When two or more persons shall be appointed executors or administrators, the probate judge shall take a separate bond from each of them.

SEC. 9. If the executor be a minor, or absent from the territory, letters of administration, with the will annexed, shall be granted during the time of such minority or absence, to some other person, unless there be another executor who shall accept the trust, in which case the estate shall be administered by such other executor, until the disqualification shall be removed, when such minor having arrived at full age, or such absentee shall be admitted as joint executor with the former, on giving bond as before required.

SEC. 10. Every person who shall be appointed administrator, with the will annexed, shall, before entering upon the execution of his trust, give bond to the territory of Oregon in like manner, and with like condition, as is required of an executor; provided that when such administrator shall be appointed in pursuance of the last preceding section, there shall be added to such condition in his bond, as follows: faithfully to deliver the letters of administration into the probate court, in case such minor shall become of full age, or said absent executor return, and obtain letters testamentary on the estate.

SEC. 11. When by reason of a suit concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary, or of administration, the judge of probate may, in his discretion, appoint a special administrator to collect and preserve the effects of the deceased, and in case of an appeal from the decree appointing such special administrator, he shall nevertheless proceed in the execution of his trust, until he shall be otherwise ordered by the district court, to which such appeal is taken.

SEC. 12. Every such administrator shall, before entering on the duties of his trust, give bond, with sufficient surety or sureties, in such sum as the judge of probate shall order, payable to the territory of Oregon, with condition as required of an executor, or in other cases of administratorship, to make and return into the probate court within three months, a true inventory of all the goods, chattels, rights and credits of the deceased, which have or shall come to his possession or knowledge; and that he will truly account, on oath, for all the goods, chattels, debts and effects of the deceased, that shall be received by him as such special administrator, whenever required by the judge of probate, and will deliver the same to the person who shall be appointed executor or administrator of the deceased, or to such other person as shall be lawfully authorized to receive the same.

SEC. 13. Such special administrators shall collect all the goods, chattels, and debts of the deceased, and preserve the same for the executor or administrator who shall thereafter be appointed, and for that purpose may commence and maintain suits as an administrator; and may also sell such perishable and other goods as the judge of probate shall order to be sold, and he shall be allowed such compensation for his services, as the judge of probate shall deem reasonable.

SEC. 14. Upon granting letters testamentary or of administration, the power of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator, all the goods, chattels, money and effects of the deceased in his hands; and the executor or administrator may be admitted to prosecute any suit, commenced by the special administrator, in like manner as an administrator de bonis non is authorized to prosecute a suit commenced by a former executor or administrator.

SEC. 15. Such special administrator shall not be liable to an action by any creditor of the deceased; and the time of limitation for all suits against the estate shall begin to run from the time of granting letters testamentary or of administration in usual form, in like manner, as if such special administration had not been granted.

SEC. 16. Application for letters of administration shall be made by petition in writing, signed by the applicant or his attorney, and filed in the probate court, which petition shall set forth the facts essential to giving the court jurisdiction of the case; and such applicant, at the time of making such application, shall make an affidavit, stating to the best of his knowledge and belief, the names and places of residence of the heirs of the deceased; that the deceased died without a will; that he will make a perfect inventory of, and faithfully administer all the estate of the deceased, pay the debts, as far as the assets will extend and the law direct, and account for and pay over all assets which shall come into his possession or knowledge.

SEC. 17. A similar affidavit, with such variations as the case may require, shall be made by administrators, of the goods remaining unadministered, and by administrators during the time of a contest about a will, or the granting of letters of administration.

SEC. 18. Every administrator with the will annexed, and executor, at the time letters are granted him, shall make an affidavit that he will make a perfect inventory of the estate, and faithfully execute the last will of the testator; pay the debts and legacies so far as the assets will extend, and the law direct, render just accounts, and faithfully perform all things required by law touching such executorship or administration.

SEC. 19. No judge of the probate court, no sheriff, clerk of a court, or deputy of either, and no attorney at law, shall be taken as security in any bond required to be taken by this act.

SEC. 20. The judge of probate shall take special care to take as securities, men who are solvent and sufficient, and who are not bound in too many other bonds; and to satisfy himself, he may take testimony, and examine on oath the applicant or persons offered as securities.

SEC. 21. The judge of probate shall record, in a well bound book, kept for that purpose, all bonds given by executors and administrators, and preserve the originals in regular files.

SEC. 22. The judge of probate shall record in a well bound book kept for that purpose, all letters testamentary and of administration, before they are delivered to the executors or administrators, and shall certify on such letters that they have been so recorded.

SEC. 23. Copies of such letters, or copies of the records thereof, certified by the probate judge, and under the seal of the probate court, shall be received as evidence in any court in this territory.

SEC. 24. Letters testamentary, to be issued to executors under the provisions of this act, may be in the following form:

The United States of America, } ss.
County of ——,

To all persons to whom these presents shall come, greeting:

Know ye, the last will and testament of A. B, deceased, hath in due form of law been exhibited, proven and recorded in the probate court for —— county, a copy of which is hereto annexed; and inasmuch as it appears that C. D. hath been appointed executor in and by said last will and testament to execute the same, and to the end that the property of the testator may be preserved for those who appear to have a legal right or interest therein, and that said last will and testament may be executed according to the will of the testator; we do hereby authorize him, the said C. D, as such executor, to collect and secure, all and singular, the goods, chattels, rights and credits which were of the said A. B. at the time of his death, in whosesoever hands or possession the same may be found; and to perform and fulfill all such duties as may be enjoined upon him by said will, so far as there shall be property, and the law charge him; and in general to do and perform all other acts and things which now are, or hereafter may be required of him by law.

In testimony whereof, I, E. G, judge of the probate court for ——

county, have hereunto signed my name, and affixed the seal of said court, at ———, in said county, this ——— day of ———, A. D., 18—.

E. G,
Judge of Probate.

[Seal of Probate Court.]

SEC. 25. Letters of administration hereafter to be issued in this territory, may be in the following form:

The United States of America, } ss.
County of ———, }

To all persons to whom these presents shall come, greeting:

Know ye, that whereas A. B, late of the county of ———, died intestate as it is said, leaving at the time of his death property in this territory which may be lost, destroyed or diminished in value, if speedy care be not taken of the same; to the end therefore, that said property may be collected, preserved and disposed of according to law; we do hereby appoint C. D. administrator of all the goods and chattels, rights and credits which were of the said A. B. at the time of his death, with full power and authority to secure and dispose of said property according to law, and collect all monies due said deceased, and in general to do and perform all other acts and things which are, or hereafter may be required of him by law.

In testimony whereof, I, E. G, judge of the probate court for ——— county, have hereunto signed my name, and affixed the seal of said court at ——— in said county, this ——— day of ———, A. D. 18—.

E. G.,
Judge of Probate.

[Seal of Probate Court.]

SEC. 26. In all cases where letters of administration, with the will annexed, letters of administration to special administrators, or letters of administration de bonis non, shall hereafter be issued by the probate court, the same may be issued in conformity to the foregoing forms, with such variations as may suit each particular case.

SEC. 27. If, after letters of administration are granted, a will of the deceased be found, and probate thereof be granted, the letters shall be revoked; and letters testamentary or of administration, with the will annexed, shall be granted.

SEC. 28. If, after a will has been found, and letters thereon granted, the will shall afterwards be set aside, the letters shall be revoked, and letters of administration granted on the goods unadministered.

SEC. 29. If any executrix or administratrix marry, her husband shall not thereby acquire any interest in the effects of her testator or intestate; nor shall the administration thereby devolve on him, but the marriage shall extinguish her powers and the letters be revoked.

SEC. 30. If any executor or administrator become of unsound mind, or be convicted of felony or other infamous crime, or become a habitual drunkard, or otherwise incapable of or unsuitable for executing the trust reposed in him, or fail to discharge his official duties, or waste or mismanage the estate, or act so as to endanger any co-executor or co-administrator, the probate court upon complaint in writing made by any person interested, supported by affidavit, and due notice given to the person complained of, shall hear the complaint, and if they find it just, shall revoke the letters granted.

SEC. 31. If any heir, legatee, creditor or other person interested in any estate, file in the probate court an affidavit stating that the affiant has sufficient cause to believe that the security in the executor's or adadministrator's bond has or is likely to become insolvent; or has died or removed from the territory; or that the principal in such bond has or is likely to become insolvent or is wasting the estate; or that the penalty of such bond is insufficient or that such bond has not been taken according to law; and shall have given the principal in such bond at least ten days' notice of the complaint, the court shall examine into the complaint.

SEC. 32. If any person bound as security in any executor's or administrator's bond, file in the probate court an affidavit stating that the affiant has sufficient reason to believe and does believe his co-surety has died, or has or is likely to become insolvent, or has removed from the territory; or the principal in such bond has or is likely to become ininsolvent or is wasting the estate, and shall have given to the principal in such bond at least ten days' notice of such complaint, the court shall examine into the same.

SEC. 33. If the probate court find the complaint mentioned in either of the two preceding sections to be just, it shall order another bond and sufficient security to be given.

SEC. 34. Such additional bond when given and approved, shall discharge the former securities from any liability arising from the misconduct of the principal after the filing of the same; and such former securities shall only be liable for such misconduct as happened prior to the giving such new bond.

SEC. 35. If such person fail to give such additional bond and security for ten days after making such order, his letters from thenceforth shall be deemed to be revoked and his authority from that time cease.

SEC. 36. If any executor or administrator shall publish for six weeks in some newspaper in this territory in general circulation in the county wherein his letters were granted, a notice of his intention to apply to the probate court to resign his letters, and the court on proof of such publication, believe that he should be permitted to resign, it shall so order; said publication of notice in the newspaper, upon application to the probate court for that purpose may be dispensed with, and instead thereof, the probate court may require said executor or administrator to post ten written or printed handbills containing said notice in ten of the most public places in the county where his letters were granted, at least twenty days before the term of the court at which he makes application to resign his letters.

SEC. 37. Such person shall then surrender his letters; his power from that time shall cease; and he shall pay the expenses of publication, and of all the proceedings on such application.

SEC. 38. If there be more than one executor or administrator of an estate, and the letters of part of them be revoked or surrendered or a part die, or in any way become disqualified, those who remain shall perform all the duties required by law respecting the estate.

SEC. 39. If all the executors or administrators of an estate shall die, resign, or their letters be revoked, in cases not otherwise provided for, letters of administration of the goods remaining unadministered shall be granted those to whom administration would have been granted if the original letters had not been obtained, or the person obtaining them had renounced administration; and the administrator shall perform the like duties and incur the like liabilities as the former executors or administrators.

SEC. 40. If any executor or administrator resign or his letters be revoked or he die, he or his legal representatives shall account for, pay and deliver to his successor, or to the surviving or remaining executor or administrator, all money and property of every kind, and all rights, credits, deeds, evidences of debt, and papers of every kind of the deceased at such time and in such manner as the court shall order on final settlement with such executor or administrator or his legal representatives.

SEC. 41. The succeeding administrator, a remaining executor or admidistrator may proceed at law against any delinquent former executor or administrator, or his legal representatives or the securities of either, or against any other person possessed of any part of the estate.

SEC. 42. All suits against securities shall be commenced within six years after the revocation or surrender of letters of administration or death of the principal.

SEC. 43. If any executor or administrator fail to make either annual or final settlement as required by law, and do not show good cause for such failure, after having been cited for that purpose by the probate court, it shall order such executor or administrator to give notice when required, and to make such settlement; and may enforce obedience to such order by attachment and may revoke his letters.

SEC. 44. If any person who has surrendered his letters testamentary or of administration, or whose letters have been revoked, or the legal representatives of any deceased executor or administrator shall fail to make final settlement as required by law after being cited for that purpose by the probate court, it shall order such delinquents to make such settlement, and may enforce obedience to such order by attachment.

SEC. 45. In all cases where citations or attachments may be issued against any executor, administrator or other person for failing to settle his accounts, such delinquent shall pay all costs incurred thereby.

SEC. 46. The executor or administrator on the estate of any deceased member of a co-partnership, shall include in the inventory which he is required by law to return to the probate court, the whole of the partnership property, goods, chattels, rights and credits appraised at their true value as in other cases; but the appraisers shall carry out in the footing an amount equal only to the deceased's proportional part of the co-partnership interest.

SEC. 47. The co-partnership property thus appraised shall remain with or be delivered over as the case may be, to the surviving partner or partners who may be disposed to undertake the management thereof agreeably to the conditions of a bond which he or they shall be required to give to the territory of Oregon in such sum and with such securities as are required in other cases of administration.

SEC. 48. The condition of such bond shall in substance be as follows:

The condition of the above bond is, that if A. B, or A. B. and C. D, surviving partner or partners of the late firm of ——— ——— shall use due diligence and fidelity in closing the affairs of the said co-partnership, apply the proceeds thereof towards the payment of the co-partnership debts, render a true account on oath to the probate court whenever required so to do by said court of all the co-partnership affairs, and pay over within one year, unless a longer time be allowed by the probate court to the executor or administrator, the excess, if any there be beyond satisfying the partnership debts; then this bond shall be void, otherwise remain in full force.

SEC. 49. The probate court shall have the same authority to cite such survivor or survivors to account and to adjudicate upon such account, as in the case of any ordinary administration; and the parties interested shall have the like remedies by means of such bond for misconduct or neglect of such survivor or survivors as may be had against administrators.

SEC. 50. In case the surviving partner or partners having been duly cited for that purpose, shall all neglect or refuse to give the bond required in the forty-seventh and forty-eighth sections of this chapter, the executor or administrator on the estate of such deceased partner on giving a bond as provided in the following sections, shall forthwith take the whole partnership estate, goods, chattels, rights and credits into his own possession, and shall be authorized to use the name of the survivor or survivors in collecting the debts due the late firm if necessary, and shall with the partnership property, pay the debts due from the late firm, and return or pay to the survivors, his or their proportion of the excess, if any.

SEC. 51. Before proceeding to administer upon such partnership property as provided in the preceding section, such executor or administrator shall be required by the probate court to give further bond to its satisfaction, conditioned that he will faithfully execute his trust according to law, which bond may be enforced like other administration bonds.

SEC. 52. Every surviving partner on the demand of any administrator of a deceased partner, shall exhibit to the appraisers the partnership property belonging to the firm at the time of the death of such deceased partner, for appraisement; and in case the administration thereof shall devolve upon such administrator, the said survivor or survivors shall surrender to him on demand, all the property of such partnership, including their books, papers and all necessary documents pertaining to the same, and shall afford him all reasonable information and facilities for the execution of his trust.

SEC. 53. Every surviving partner who shall neglect or refuse to comply with the provisions of the preceding section, may be cited for such neglect or refusal to appear before the probate court; and unless he comply with such provision, or show sufficient excuse for his omission, the probate court may commit him to the common jail of the county, there to remain until he comply, or be discharged by due course of law.

SEC. 54. When two or more persons have been appointed executors or administrators, the probate court may take a separate bond with securities from each of them, or a joint bond with securities from all of them.

SEC. 57. Letters testamentary or of administration shall not be granted to a non-resident in this territory; and when an executor or administrator shall become non-resident, the probate court having jurisdiction of the estate of the testator or intestate of such executor or administrator shall revoke his letters.

CHAPTER II.

Of the inventory and collection of the effects of deceased persons.

SEC. 1. Every executor and administrator shall make and return upon oath into the probate court within two months after his appointment, a true inventory of the real and personal estate of the deceased which is by law to be administered, and which shall have come to his possession or knowledge.

SEC. 2. The estate and effects comprised in the inventory shall be appraised by three suitable disinterested persons, who shall be appointed by the judge of probate. If any part of the estate shall be in another county than that in which letters are issued, appraisers thereof may be appointed either by the probate judge having jurisdiction of the case, or by the probate judge of such county; and such appraisers shall receive as compensation for their services three dollars per day, to be paid out of the estate.

SEC. 3. Before proceeding to the discharge of their duties, the appraisers, before any officer authorized to administer oaths, shall take and subscribe on oath to be attatched to the inventory, that they will honestly and impartially appraise the property which shall be exhibited to them, according to the best of their knowledge and ability: then they shall proceed to estimate and appraise the property, and set down each article separately with the value thereof in dollars and cents in figures opposite the respective articles. The inventory shall contain all the estate of the deceased, real and personal, which is by law to be administered; a statement of all debts, partnership and other interests, bonds, mortgages, notes and other securities for the payment of money belonging to the deceased, specifying the name of the debtor in each security, the date, the sum originally payable, the indorsements thereon if any, and their dates, and the sum which in the judgment of the appraisers may be collectable on each debt, interest or security.

SEC. 4. The inventory shall also contain an account of all monies belonging to the deceased, which shall have come to the possession or knowledge of the executor or administrator, and if none shall come to his possession or knowledge, the fact shall be so stated in the inventory.

SEC. 5. The naming any executor in a will shall not operate as a discharge from any just claim which the testator had against the executor, but the claim shall be included in the inventory, and the executor shall be liable for the same as for so much money in his hands at the time the debt or demand became due.

Sec. 6. The discharge or bequest in a will of any debt or demand of the testator against any executor named in his will, or against any other person, shall not be valid against the creditors of the deceased, but shall be construed as a specific bequest of such debt or demand; and the amount thereof shall be included in the inventory, and shall if necessary, be applied in payment of his debts; if not necessary for that purpose, it shall be paid in the same manner and proportion as other specific legacies.

Sec. 7. The inventory shall be signed by the appraisers, and the executor or administrator shall take and subscribe on oath before the probate judge, that the inventory contains a true statement of all the estate of the deceased which has come to his possession or knowledge, and particularly of all monies belonging to the deceased, and of all just claims of the deceased against the executor or administrator; and the oath shall be indorsed upon or annexed to the inventory.

Sec. 8. If any executor or administrator shall neglect or refuse to return the inventory within the time prescribed or within such further time, not exceeding three months, as the court shall allow. the court shall revoke the letters testamentary or of administration, and the executor or administrator shall be liable on his bond for any injury sustained by the estate through his neglect.

Sec. 9. Whenever property not mentioned in any inventory that shall have been made, shall come to the possession or knowledge of the executor or administrator, he shall cause the same to be appraised in the manner prescribed in this chapter, and an inventory to be returned, subscribed and sworn to as is provided in section seven of this chapter, within two months after the discovery thereof; and the making of such inventory may be enforced, after notice, by attachment or removal from office.

Sec. 10. The executor or administrator shall have a right to the possession of all the real as well as personal estate of the deceased, and may receive the rents and profits of the real estate until the estate shall be settled or delivered over by order of the probate court to the heirs or devisees, and shall keep in good tenantable repair, all houses, buildings, and fixtures thereon, which are under his control.

Sec. 11. The personal estate of the deceased which shall come into the hands of the executor or administrator, shall be first chargeable with the payment of the debts and expenses; and if the goods, chattels, rights and credits in the hands of the executor or administrator, shall not be sufficient to pay the debts of the deceased, the expenses of administration, and the allowance to the family of the deceased, the whole, or so much as may be necessary of the real estate may be sold for that purpose by the executor or administrator, in the manner prescribed by this act.

Sec. 12. If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels or effects of any deceased person, he shall stand chargeable, and be liable to the action of the executor or administrator of the estate, in double the value of the property so embezzled or alienated, to be recovered for the benefit of the estate.

Sec. 13. If any executor, administrator, heir, legatee, creditor, or other person interested in the estate of any deceased person, shall complain to the probate judge on oath, that any person is suspected of having concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods or chattels of the deceased; or that he has in his possession or knowledge, any deeds, conveyances, bonds, contracts or other writings which contain evidences of, or tend to disclose the right, title, interest or claim of the deceased, to any real or personal estate, or any claim, demand, or last will of the deceased, the said judge may cite such person to appear before the probate court, and may examine him on oath upon the matter of such complaint. If such person be not in the county where letters have been granted, he may be cited and examined, either before the probate court for the county where he may be found, or before the court issuing the order or citation; but in the latter case, if he appear and be found innocent, his necessary expenses shall be allowed him out of the estate.

Sec. 14. If the person so cited refuse to appear and submit to such examination, or to answer such interrogatories as may be put to him, touching the matter of such complaint, the court may, by warrant for that purpose, commit him to the county jail, there to remain in close custody until he shall submit to the order of the court; and all such interrogatories and answers shall be in writing, and shall be signed by the party examined and filed in the probate court.

Sec. 15. The probate judge upon the complaint on oath of any executor or administrator, may cite any person who shall have been entrusted with any part of the estate of the deceased person, to appear before the probate court, and may require such person to give a full account on oath, of any moneys, goods, chattels, bonds, accounts or other papers belonging to the estate, which shall have come to his possession, in trust for such executor or administrator, and of his proceedings thereon ; and if the person so cited shall refuse to appear and answer such account, the court may proceed against him as provided in the preceding section.

CHAPTER III.

Provision for the support of the family.

Sec. 1. When a person shall die, leaving a widow and minor child or children, the widow, child or children shall, until letters have been granted and the inventory returned, be entitled to remain in possession of the homestead and of all the wearing apparel of the family, and of all the household furniture of the deceased, and shall also be entitled to a reasonable provision for their support, to be allowed by the probate judge.

Sec. 2. Upon the return of the inventory, the court shall set apart for the use of the widow, minor child or children, all the property of the estate, by law exempt from execution.

Sec. 3. If the amount thus exempt be insufficient for the support of the widow and minor child or children, the probate court shall make such further reasonable allowance out of the estate as may be necessary for the maintenance of the family, according to their circumstances, during the progress in the settlement of the estate; but no such allowance shall be made after one year from the granting letters testamentary or of administration.

SEC. 4. Any allowance made by the court in accordance with the provisions of the preceding section, shall be paid by the executor or administrator, in preference to all other charges, except funeral charges, and expenses of administration.

SEC. 5. When property shall have been set apart for the use of the family, in accordance with the provisions of this chapter, if the deceased shall have left a widow and no minor children, such property shall be the property of the widow; if he shall have left also a minor child or children, one-half to the widow and the remainder to such child, or in equal shares to such children, if there are more than one; if there be no widow, then the whole shall belong to the minor child or children.

SEC. 6. If on the return of the inventory of any intestate's estate, who died, leaving a widow or minor children, it shall appear that the value of the estate does not exceed three hundred dollars, the probate court shall, by decree for that purpose, assign for the use and support of the widow and minor children of the intestate, or for the support of the minor child or children, if there be no widow, the whole estate after the payment of the funeral expenses, and expenses of administration, and there shall be no further proceeding in the administration, unless further estate be discovered.

SEC. 7. If intestate leave no widow or minor children, all his estate shall be assets in the hands of the administrator, after payment of funeral expenses, and expenses of administration, for the payment of the debts of the deceased, or to be distributed according to law.

CHAPTER IV.

Of claims against the estate.

SEC. 1. Every executor or administrator shall, immediately after his appointment, cause to be published in some newspaper, printed in the county if there be one, if not, then in such newspaper as may be designated by the court, a notice to the creditors of the deceased, requiring all persons having claims against the deceased, to exhibit them with the necessary vouchers, within one year after the date of the notice, to such executor or administrator, at the place of his residence or transaction of business, to be specified in the notice. Such notice shall be published as often as the judge of probate shall deem necessary, but not less than once in a week for four successive weeks.

SEC. 2. After the notice shall have been published, a copy thereof, together with an affidavit attached thereto, of the publisher or printer of the paper in which the same was published, shall be filed by the executor or administrator in the probate court.

SEC. 3. If a claim be not presented within one year after the first publication of the notice, it shall be barred, provided, if it be not then

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due, or if it be contingent, it may be presented within one year from the time it shall become due or absolute.

Sec. 4. Every claim presented to the administrator shall be supported by the affidavit of the claimant, that the amount is justly due; that no payments have been made thereon; and that there are no offsets to the same to the knowledge of the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers to be produced in support of the claim.

Sec. 5, When a claim, accompanied by the affidavit required in the preceding section has been presented to the executor or administrator, he shall indorse thereon his allowance or rejection, with the day and date thereof. If he allow the claim, it shall be presented to the probate judge, who shall in the same manner indorse on it his allowance or rejection.

Sec. 6. Every claim which has been allowed by the executor or administrator, and the judge of probate, shall be filed in the probate court, and be ranked among the acknowledged debts of the estate, to be paid in due course of administration.

Sec. 7. When a claim is rejected by either the executor, administrator or the probate judge, the holder must bring suit in the proper court, against the executor or administrator within three months after the date of its rejection, if it be then due, or within three months after it becomes due, otherwise, the claim shall be forever barred.

Sec. 8. No claim shall be allowed by the executor, administrator or probate judge, which is barred by the statute of limitations.

Sec. 9. No holder of any claim against an estate shall maintain any action thereon, unless the claim shall have been first presented to the executor or administrator.

Sec. 10. The time during which there shall be a vacancy in the administration, shall not be included in any limitations herein prescribed.

Sec. 11. If an action be pending against the testator or intestate at the time of his death, the plaintiff shall, in like manner, present his claim to the executor or administrator for allowance or rejection, authenticated as in other cases, and no recovery shall be had in the action, unless proof be made for the presentment.

Sec. 12. Whenever any claim shall have been presented to any executor or administrator and the probate judge, and a part thereof shall be allowed the amount of such allowance shall be stated in the indorsement. If the creditor shall refuse to accept the amount so allowed in satisfaction of his claim, he shall recover no costs in any action he may bring against the executor or administrator, unless he shall recover a greater amount than that offered to be allowed.

Sec. 13. The effect of any judgment rendered against any executor or administrator, upon any claim against the estate of his testator or intestate, shall be only to establish the claim in the same manner as if it had been allowed by the executor or administrator and the probate judge; and the judgment shall be, that the executor or administrator pay in due course of administration, the amount ascertained to be due. A certified transcript of the judgment shall be filed in the probate court; and no execution shall issue upon such judgment, nor shall it create any lien upon the property of the estate, or give the judgment creditor any priority of payment.

Sec. 14. When any judgment has been rendered against the testator or intestate in his lifetime, no execution shall issue thereon after his death; but it shall be presented to the executor or administrator as any other claim, but need not be supported by the affidavit of the claimant; and if justly due and unsatisfied, shall be paid in due course of administration; *provided however*, that if the execution shall have been levied upon any property of the deceased. the same may be sold for the satisfaction thereof; and the officer making the sale shall account to the executor or administrator for any surplus in his hands.

Sec. 15. If the executor or administrator doubt the correctness of any claim presented to him, he may enter into an agreement in writing, with the claimant, to refer the matter in controversy to some disinterested person, to be approved by the probate judge, upon filing the agreement and approval of the probate judge in the office of the district court for the county in which the letters testamentary or of administration were granted, and the clerk shall, either in term time or vacation, enter a rule referring the matter in controversy to the person so selected.

Sec. 16. The referee shall thereupon proceed to hear and determine the matter, and make his report thereon to the court in which the rule for his appointment shall have been entered. The same proceedings shall be had in all respects, and the referee shall have the same powers, and be entitled to the same compensation, and subject to the same control as if the reference had been made in an action in which such court might by law direct a reference. The court may, set aside the referee, and appoint another in his place, or may set aside or confirm the report and adjudge costs as in actions against executors and administrators; and the jungment of the court thereon shall be as valid and effectual, in all respects, as if the same had been rendered in a suit, commenced by the ordinary process.

Sec. 17. If the executor or administrator is himself a creditor of the testator or intestate, his claim, duly authenticated by affidavits, shall be presented for allowance or rejection, to the probate judge, and its allowance by the judge shall be sufficient evidence of its correctness.

Sec. 18. If any executor or administrator shall neglect for two months after his appointment, to give notice to creditors as prescribed by this article, it shall be the duty of the court to revoke his letters.

Sec. 19. At the same time at which the executor or administrator is required to return his inventory, he shall also return a statement of all claims against the estate which shall have been presented to him when required by the court, and from time to time thereafter, shall present a statement of claims subsequently presented to him; and in all such statements, he shall designate the names of the creditors; the nature of each claim; when it did or will become due; and whether it was allowed or rejected by him.

CHAPTER V.

Sales of property by Executors and Administrators.

Sec. 1. No sale of any property of an estate shall be valid unless made under order of the probate court.

SEC. 2. All applications for orders of sale shall be by petition in writing, in which shall be set forth the facts showing the sale to be necessary, and upon the hearing any person interested in the estate, may file his written objections, which shall be heard and determined.

SEC. 3. At the term of the court at which the inventory is returned, the executor or administrator shall apply for an order to sell the perishable property of the estate, and so much other property as may be necessary to be sold to pay the allowance made to the family of the deceased. If claims against the estate have been allowed, and a sale of property shall be necessary for their payment, or of the expenses of the administration, he shall also apply for an order to sell so much of the personal estate as shall be necessary. He shall make a similar application, giving at least two weeks previous notice in a newspaper in general circulation in the county where letters were granted, or by posting written or printed notices thereof in ten of the most public places in the county from time to time, so long as any personal property remains in his hands, and a sale is necessary to pay any demands against the estate.

SEC. 4. If it appear to the court that a sale is necessary, it shall so order. In making such sale, the court shall order such articles as are not necessary for the support and subsistence of the family of the deceased, or not specially bequeathed to be first sold.

SEC. 5. Sales of personal property shall be made at public auction, and after notice given for at least two weeks, which notice shall be given by notices posted in the public places in the county, or by publication in a newspaper, if the judge shall so order, in which shall be stated the time and place of sale.

SEC. 6. If it be made to appear to the satisfaction of the probate court that it will be for the interest of the estate to allow the executor or administrator to sell some small portion, or the whole of the personal estate at private sale, the court may so order.

SEC. 7. When the personal estate in the hands of the executor or administrator shall be insufficient to pay the allowance to the family; and all the debts and charges of the administration, the executor or administrator may sell the real estate for that purpose, upon the order of the judge of probate.

SEC. 8. To obtain such order, he shall present a petition to the probate court, setting forth the amount of the personal estate that has come to his hands, and how much, if any, remains undisposed of; a list and the amounts of the debts outstanding against the deceased as far as the same can be ascertained; a description of all the real estate of which the testator or intestate died seized; the condition and value of the respective lots and portions; the names and ages of the devisees, if any, and of the heirs of the deceased, which petition shall be verified by the oath of the party presenting the same.

SEC. 9. If it shall appear by such petition that there is not sufficient personal estate in the hands of the executor or administrator to pay the allowance to the family, the debts outstanding against the deceased, and the expenses of administration; and that it is necessary to sell the whole or some portion of the real estate for the payment of such debts, the probate judge shall thereupon make an order, directing all persons interested to appear before him at a time and place specified, not less than four nor more than eight weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator, to sell so much of the real estate of the deceased, as shall be requisite to pay such allowance, charges and debts.

Sec. 10. A copy of such order to show cause, shall be personally served on all persons interested in the estate, at least ten days before the time appointed for hearing the petition, or shall be published at least four successive weeks in such newspaper as the court shall order; *provided however*, if all persons interested in the estate, shall signify in writing their assent of such sale, the notice may be dispensed with.

Sec. 11. The probate judge, at the time and place appointed in such order, or at such other time to which the hearing may be adjourned, upon proof of the due service or publication of a copy of the order, or upon filing the consent, in writing, to such sale, of all parties interested, shall proceed to the hearing of such petition; and if such consent be not filed, shall hear and examine the allegations and proofs of the petitioners, and of all persons interested in the estate who may oppose the application.

Sec. 12. If any of the devisees or heirs of the deceased are minors, and have a general guardian in the county, the copy of the order shall be served on the guardian; if they have no such guardian, the court shall, before proceeding to act upon the petition, appoint some disinterested person their guardian for the sole purpose of appearing for them, and taking care of their interests in the proceedings.

Sec. 13. The executor or administrator may be examined under oath, and witnesses may be examined by either party, and process may be issued to compel their attendance and testimony, may be issued by the probate judge in the same manner, and with like effect as in other causes.

Sec. 14. If it shall appear to the court that it is necessary to sell a part of the real estate, and that by a sale of such part, the residue of the estate, or some specific part or piece thereof, would be greatly injured, the court may authorize the sale of the whole estate, or of such part thereof as may be adjudged necessary, and most for the interest of all concerned.

Sec. 15. If the probate judge shall be satisfied, after a full hearing upon the petition, and on examination of the proofs and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary for the payment of the allowance to the family, and all valid claims against the estate, and charges of administration, or if such sale be assented to by all the persons interested, he shall make an order of sale authorizing the executor or administrator to sell the whole or so much and such parts of the real estate described in the petition, as he shall judge necessary or beneficial.

Sec. 16. The order shall specify the lands to be sold, and the terms of sale, which may be either for cash or on credit, not exceeding six months, as the court may direct. If it appear that any part of such real estate has been devised, and not charged in such devise with the payment of debts, the court shall order that part descended to heirs to be sold before that so devised.

Sec. 17. If the executor or administrator shall neglect to apply for an order of sale whenever it may be necessary, any person interested in the estate may make application therefor in the same manner as the executor or administrator, and notice thereof shall be given to the executor or administrator before the hearing.

SEC. 18. Upon making such order, a certified copy thereof shall be delivered by the probate judge to the executor or administrator, who shall be thereupon authorized to sell the real estate as directed.

SEC. 19. When a sale is ordered, notice of the time and place of sale shall be posted in ten of the most public places in the county where the land is situated, at least twenty days before the day of sale, and shall be published in some newspaper in this territory in general circulation in said county, for three successive weeks next before such sale, in which notice the lands and tenements shall be described with common certainty.

SEC. 20. Such sale shall be in the county where the lands are situated, at public auction, between the hours of ten o'clock in the morning, and the setting of the sun, the same day; but if the executor or administrator shall deem it for the interest of all concerned that the sale should be postponed, he may adjourn it for any time not exceeding fourteen days.

SEC. 21. In case of such adjournment, notice thereof shall be given by a public proclamation at the time and place first appointed for the sale; and if the adjournment shall be for more than one day, further notice shall be given by posting or publishing as the time and circumstances may admit.

SEC. 22. The executor or administrator shall, when the sale is on credit, take the note or notes of the purchaser for the purchase money, with a mortgage on the property to secure their payment.

SEC. 23. The executor or administrator making any sale of real estate shall, at the next term of the court thereafter, make a return of his proceedings to the probate judge, who shall examine the same, and if he shall be of opinion that the proceedings were unfair, or that the sum bidden is disproportionate to the value, and that a sum exceeding such bid, at least ten per cent. exclusive of expenses of a new sale may be obtained, he shall vacate such sale, and order another to be had, of which notice shall be given, and the sale shall be conducted in all respects as if no previous sale had taken place.

SEC. 24. When the return of the sale is made, any person interested in the estate, may file written objections to the confirmation of the sale; and may be heard, and produce witnesses in support of his objections.

SEC. 25. If it appear to the court that the sale was legally made, and fairly conducted, and that the sum bidden was not disproportionate to the value of the property sold, or if disproportionate, that a greater sum as above specified, cannot be obtained, the court shall make an order confirming the sale, and directing conveyances to be executed; and such sale from that time shall be confirmed and valid.

SEC. 26. Such conveyances shall thereupon be executed to the purchaser by the executor or administrator; they shall contain and set forth at large the original order authorizing a sale, and the order confirming the same and directing the conveyances, and they shall be deemed to convey all the estate, rights and interest of the testator or intestate at the time of his death.

SEC. 27. Before any order is entered confirming the sale, it shall be proven to the satisfaction of the probate judge, that notice of the sale was given as herein prescribed, and the order of confirmation shall state that such proof was made.

Sec. 28. When a testator shall have given any legacy by will that is effectual to charge real estate, and his goods, chattels, rights and credits shall be insufficient to pay such legacy, together with his debts and charges of administration, the executor or administrator with the will annexed, may obtain an order to sell his real estate for that purpose in the same manner, and upon the same terms and conditions as are prescribed in this chapter, in case of a sale for the payment of debts.

Sec. 29. If the testator shall make provision by his will, or designate the estate to be appropriated for the payment of his debts, the expenses of administration or family expenses, they shall be paid according to the provisions of the will, and out of the estate thus appropriated, so far as the same may be sufficient.

Sec. 30. When any such provision has been made, or any property directed to be sold, the executor or administrator with the will annexed, may proceed to sell without the order of the probate court, but he shall be bound as an administrator, to give notice of the sale, and return accounts thereof to the court, and to proceed in making the sale, in all respects as if it were made under the order of the court, unless there are special directions given in the will, in which case he shall be governed by such directions.

Sec. 31. If the provision made by the will, or the estate appropriated be not sufficient to pay the debts and expenses of administration and family expenses, such part of the estate as shall not have been disposed of by the will, if any, shall be appropriated for that purpose according to the provisions of this act.

Sec. 32. The estate, real and personal, given by the will to any legatees or devisees, shall be held liable for the payment of the debts, the expenses of administration and of the family, in proportion to the value or amount of the several devises or legacies; except that specific devises or legacies may be exempted, if it shall appear to the court necessary to carry into effect the intention of the testator, if there shall be other sufficient estate.

Sec. 33. When the estate given by any will has been sold for the payment of debts and expenses, all the devisees and legatees shall be liable to contribute according to their respective interests to any devisee or legatee from whom the estate devised to him may be taken for the payment of the debts or expenses; and the probate court, when distribution is made, shall, by decree for that purpose, settle the amount of the several liabilities, and decree how much each person shall contribute.

Sec. 34. If a deceased person, at the time of his death, was possessed of a contract for the purchase of lands, his interest in such land, and under such contracts, may be sold on the application of his executor or administrator, in the same manner as if he had died seized of such lands; and the same proceedings may be had for that purpose, as are prescribed in this chapter in respect to lands of which he died seized, except as hereinafter provided.

Sec. 35. Such sale shall be made subject to all payments that may thereafter become due on such contracts, and if there be any such payments thereafter to become due, such sale shall not be confirmed by the probate judge, until the purchaser shall have executed a bond to the executor or administrator for his benefit and indemnity, and for the benefit and indemnity of the persons entitled to the interest of the deceased, in the lands so contracted for, in double the whole amount of the payments thereafter to become due on such contract, with such securities as the probate judge shall approve.

SEC. 36. Such bond shall be conditioned that the purchaser will make all payments for such land as shall become due after the date of such sale, and will fully indemnify the executor or administrator, and the persons so entitled, against all demands, costs, and charges and expenses by reason of any covenant or agreement contained in such contract, but if there be no payments thereafter to become due on such contract, no bond shall be required of the purchaser.

SEC. 37. Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser on assignment of the contract, which assignment shall vest in the purchaser, his heirs and assigns, all the right, title and interest of the persons entitled to the interests of the deceased in the lands sold at the time of the sale, and such purchaser shall have the same rights and remedies against the vendor of such lands as the deceased would have had if living.

SEC. 38. If any person die, having mortgaged any real or personal estate, and shall not have devised the same, or provided for the redemption thereof by will, the probate court, upon the application of any person interested, may order the executor or administrator to redeem the estate out of the personal assets, if it should appear to the satisfaction of the court that such redemption would be beneficial to the estate, and not injurious to creditors.

SEC. 39. If such redemption be not deemed expedient, the court shall order such property to be sold at public sale, which sale shall be with the same notice, and conducted in the same manner as is required in other cases of sales of real estate provided for in this chapter; and the executor or administrator shall execute a conveyance thereof to the purchaser, which conveyance shall be effectual to convey to the purchaser all the right, title and interest, which the deceased would have had in the property, had not the same been mortgaged by him; and the purchase money, after paying the expenses of sale, shall first be applied to the payment and discharge of such mortgage, and the residue in due course of administration.

SEC. 40. If there shall be any neglect or misconduct in the proceedings of the executor or administrator in relation to any sale by which any person interested in the estate shall suffer damages, the party aggrieved may recover the same in a suit upon the bond of the executor or administrator, or otherwise as the case may require.

SEC. 41. Any executor or administrator who shall fraudulently sell any real estate of his testator or intestate, contrary to the provisions of this chapter, shall be liable in double the value of the land sold, as damages to be recovered in an action by the person or persons having an estate of inheritance therein.

SEC. 42. No action for the recovery of any estate sold by any executor under the provisions of this chapter, shall be maintained by any person, claiming under the deceased testator or intestate, unless it be commenced within three years next after the sale.

SEC. 43. The preceding section shall not apply to minors or others under any legal disability to sue at the time when the right of action shall first accrue; but all such persons may commence such action at any time within three years after the removal of the disability.

SEC. 44. Whenever a sale shall have been made by an executor or administrator of any property of the estate, real or personal, it shall be his duty to return to the probate court at its next term thereafter, an account of sales, verified by his affidavit.

SEC. 45. No executor or administrator shall directly or indirectly, purchase any property of the estate.

CHAPTER VI.

Of the powers and duties of the Executor and Administrator, and of the management of the estate.

SEC. 1. The executor or administrator shall take into his possession all the estate of the deceased, real and personal, and collect all debts due to the deceased.

SEC. 2. Actions for the recovery of any property, real or personal, or for the possession, and all actions founded upon contracts may be maintained by, and against executors and administrators, in all cases in which the same might have been maintained by or against their respective testators or intestates.

SEC. 3. Executors and administrators may maintain actions against any person who shall have wasted, destroyed, taken, carried away or converted into his own use, the goods of their testator or intestate in his lifetime; also may maintain actions for trespass committed on the estate of the deceased in his lifetime.

SEC. 4. Any person or his personal representatives shall have an action against the executor or administrator of any testator or intestate, who in his lifetime shall have wasted, destroyed, taken or carried away, or converted to his own use, the goods or chattels of any such person, or committed any trespass on the real estate of such person.

SEC. 5. Any administrator may, in his own name, for the use and benefit of all parties interested in the estate, maintain actions on the bond of an executor, or of any former administrator of the same estate.

SEC. 6. Whenever a debtor of a deceased person shall be unable to pay all his debts, the executor or administrator may, with the approbation of the probate judge, compound with him, and give him a discharge upon receiving a fair and just dividend of his effects.

SEC. 7. When there shall be a deficiency of assets in the hands of an executor or administrator; and when the deceased shall in his lifetime have conveyed any real estate, or any right or interest therein, with intent to defraud his creditors, or to avoid any right, debt, or duty of any person; or shall have so conveyed such estate, that by law the deeds or conveyances are void as against creditors, the executor or administrator may, and it shall be his duty to commence, and prosecute to final judgment, any proper action for the recovery of the same; and may recover for the benefit of the creditors all such real estate so fraudulently conveyed; and may also for the benefit of the creditors, sue and recover all goods, chattels, rights and credits which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

SEC. 8. No executor or administrator shall be bound to sue for such estate, as mentioned in the preceding section, for the benefit of the creditors, unless on application of the creditors of the deceased; nor unless the creditors, making such application, shall pay such part of the costs and expenses, or give such security to the executor or administrator thereof, as the probate judge shall direct.

SEC. 9. The real estate so recovered shall be sold for the payment of debts, in the same manner as if the deceased had died seized thereof, upon obtaining an order therefor from the probate court; and the proceeds of all goods, chattels, rights and credits so recovered, shall be appropriated in payment of the debts of the deceased, in the same manner as other property in the hands of the executor or administrator.

CHAPTER VII.

Of the conveyance of real estate by Executors and Administrators in certain cases.

SEC. 1. When any person who is bound by contract in writing, to convey any real estate, shall die before making the conveyance, the probate court may make a decree authorizing and directing the executor or administrator to convey such real estate to the person entitled thereto in all cases where such deceased person, if living, might be compelled to make such conveyonce.

SEC. 2. On presentation of a petition of any person claiming to be entitled to such conveyance from any executor or administrator, setting forth the facts upon which such claim is predicated, the probate judge shall appoint a time and place for hearing such petition, which shall be at a regular term of the court, and shall order notice of the pending thereof, and the time and place of hearing, to be published at least four successive weeks next before such hearing, in such newspaper in this territory as the court shall designate.

SEC. 3. At the time and place appointed for such hearing, or at such other time as the same may be adjourned to, upon proof by affidavit of the due publication of the notice, the court shall proceed to a hearing, and all persons interested in the estate may appear and defend such petition, by filing their objections in writing, and the court may examine on oath the petitioner, and all who may be produced before him for that purpose.

SEC. 4. After a full hearing upon such petition and objections, and examination of the facts and circumstances of the claim, if the probate judge is satisfied that the petitioner is entitled to a conveyance of the real estate described in his petition, he shall make a decree, authorizing and directing the executor or administrator to execute a conveyance thereof to the petitioner.

SEC. 5. Any person interested may appeal from such decree to the district court for the same county, as in other cases; but if no appeal be taken from such decree within the time limited therefor by law; or if such decree be confirmed on appeal, it shall be the duty of the executor or administrator to execute the conveyance according to the directions contained in the decree, and a certified copy thereof shall be recorded with the deed in the office of the recorder of the county where the lands lie, and shall be evidence of the correctness of the proceedings and of the authority of the executor or administrator to make the conveyance.

SEC. 6. If upon a hearing in the probate court as hereinbefore provided, the probate judge shall doubt the right of the petitioner to have a specific performance of the contract, he shall dismiss the petitioner without prejudice to the rights of the petitioner, who may at any time within six months thereafter, proceed in to the district court enforce a specific performance.

SEC. 7. Every conveyance made in pursuance of a decree of the probate court, as provided in this chapter, shall be effectual to pass the estate contracted for, as fully as if the contracting party himself were still living, and then executed the conveyance.

SEC. 8. A copy of the decree for the conveyance made by the probate court, and duly certified and recorded in the office of the recorder for the county where the lands lie, shall give the person entitled to the conveyance, a right to the provision of the lands contracted for, and of holding the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

SEC. 9. The recording of any decree as provided in the proceding section, shall not prevent the court making such decree, from enforcing the same by other process.

SEC. 10. If the person to whom the conveyance was to be made, shall die before the commencement of the proceedings, according to the provisions of this chapter, or before the completion of the conveyance, any person who would have been entitled to the conveyance under him, as heir, devisee, or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person for the benefit of the person entitled, may commence such proceedings, or prosecute the same if already commenced; and the conveyance shall be so made as to vest the estate in the same persons who would have been entitled to it, or in the executor or administrator for their benefit.

CHAPTER VIII.

Of accounts to be rendered by Executors or Administrators, and of the payment of debts.

SEC. 1. No executor or administrator shall be chargeable upon any special promise to answer damages, or to pay the debts of the testator or intestate, out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof, is in writing, and signed by such executor or administrator, or by some other person, by him thereunto specially authorized.

SEC. 2. Every executor or administrator shall be chargeable in his own account, with the whole estate of the deceased which may come into his possession, at the value of the appraisement contained in the inventory, except as provided in the following sections, and with all the interest, profit and income of the estate.

SEC. 3. He shall not make profit by the increase, nor suffer loss by the decrease or destruction without his fault, of any part of the estate. He shall account for the excess when he shall have sold any part of the estate for more than the appraisment; and if any shall have been sold for less than the appraisement, he shall not be responsible for the loss if the sale has been justly made.

SEC. 4. No executor or administrator shall be accountable for any debts due the estate, if it shall appear that they remain uncollected, without his fault.

SEC. 5. He shall be allowed all necessary expenses in the care, management and settlement of the estate, and for his services, such fees as the law provides; but when the deceased by his will shall have made some other provision for the compensation of his executor, that shall be deemed a full compensation for his services, unless he shall by a written instrument, filed in the probate court, renounce all claim for compensation provided by the will.

SEC. 6. No administrator or executor shall purchase any claim against the estate he represents; and if he shall have paid any claim for less than its nominal value, he shall only be entitled to charge in his account, so much as he shall have actually paid.

SEC. 7. When no compensation shall have been provided by will, or the executor have renounced his claim thereto, he shall be allowed commission upon the whole estate accounted for by him, as follows: for the first one thousand dollars, at the rate of seven per cent; for all above that sum and not exceeding two thousand dollars, at the rate of five per cent; for all above that sum, at the rate of four per cent; and the same commissions shall be allowed to administrators. In all cases such further allowance may be made as the probate judge shall deem just and reasonable for any extraordinary services not required of an executor or administrator in the common course of his duty; provided that the total amount of such allowance shall not exceed the amount of commission allowed by this section.

SEC. 8. Within six months after his appointment, and thereafter at any time when required by the court, either upon its own motion or the application of any person interested in the estate, the executor or administrator shall render for the information of the court, an exhibit under oath, showing the amount of money received and expended by him; the amount of all claims presented against the estate, and the names of the claimants; and all other matters necessary to show the condition of its affairs.

SEC. 9. If the executor or administrator fail to render an exhibit within six months, as required in the last preceding section, it shall be the duty of the probate judge to issue a citation, requiring him to appear and render it.

SEC. 10. Any person interested in the estate, may at any time before the final settlement of accounts, present his petition to the probate judge, praying that the executor or administrator be required to appear and render such exhibit, setting forth the facts, showing that it is necessary and proper that such an exhibit should be made.

SEC. 11. If the probate judge be satisfied, either from the oath of the applicant or from any other testimony that may be offered, that the facts alleged are true, and shall consider the showing of the applicant sufficient, he shall issue a citation to the executor or administrator, requiring him to appear on some day named in the citation, which shall be during a term of the court, and render an exhibit as prayed for.

SEC. 12. When an exhibit is rendered by an executor or administrator, any person interested may appear and by objections in writing, contest any account or statement therein contained. The court may examine the executor or administrator, and if he have been guilty of negligence, or wasted, embezzled, or mismanaged the estate, his letters shall be revoked.

SEC. 13. If any executor or administrator, neglect or refuse to appear and render an exhibit after having been duly cited, an attachment may be issued against, or his letters may be revoked, in the discretion of the court.

SEC. 14. Every executor or administrator shall render a full account of his administration, at the expiration of one year from the time of his appointment. If he fail to present his account, it shall be the duty of the judge, to compel the rendering of such account by attachment; and any person interested in the estate, may apply for and obtain an attachment; but no attachment shall issue, unless a citation shall have been first issued and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue.

SEC. 15. Whenever the authority of an executor or administrator shall cease, or be revoked for any reason, he may be cited to account before the probate court, at the instance of the person succeeding to the administration of the same estate, in like manner as might have been cited by any person interested in the estate, during the time he was executor or administrator.

SEC. 16. If the executor or administrator resides without the county, absconds, or conceals himself so that citation cannot be personally served, and shall neglect to render an account within thirty days after the time above prescribed, or if he shall neglect to render an account within thirty days after having been committed, when the attachment has been executed, his letters shall be revoked.

SEC. 17. In rendering his account, the executor or administrator shall produce vouchers for all expenses and charges which he shall have paid; which vouchers shall be filed and remain in court; and he may be examined on oath touching such payments; and also, touching any property and effects of the deceased, and the disposition thereof.

SEC. 18. On the settlement of his account, he may be allowed any item of expenditure, not exceeding twenty dollars, for which no voucher is produced, if such item be supported by his own oath, positive to the fact of payment, specifying when, where, and to whom payment was made, and if such oath be uncontradicted; but such allowances in the whole shall not exceed five hundred dollars for payment, in behalf of any one estate.

SEC. 19. When the account is rendered for settlement, notice thereof shall be given by the probate judge, by causing notices to be posted in three of the most public places in the country. The notice shall set forth the name of the estate, of the executor or administrator, and the day appointed for the settlement of accounts, which shall be on some day of a term of court.

Sec. 20. On the day appointed, or on any subsequent day to which the hearing may have been adjourned by the court, any person interested in the estate, may appear and file his exceptions, in writing, to the account, and contest the same.

Sec. 21. If there be any minor interested in the estate, who has no legally appointed guardian, the court shall appoint some disinterested person to represent him, who, on behalf of the minor, may contest the account as any other person interested might contest it; and who shall be allowed by the court, a reasonable compensation for his services.

Sec. 22. The hearing and allegations of the respective parties may be adjourned from time to time, as shall be necessary, and the court may appoint one or more auditors to examine the accounts and make report thereon subject to confirmation, and may allow a reasonable compensation to such auditors, to be paid out of the estate of the deceased.

Sec. 23. The settlement of the account and the allowance thereof by the court, or upon appeal, shall be conclusive against all persons, in any way interested in the estate; saving, however, to all persons laboring under any legal disability, their rights to proceed against the executor or administrator, either individually or upon his bond within two years after their respective disabilities shall have ceased; and in any action brought by any such person, the allowance and settlement of the account shall be deemed presumptive evidence of its correctness.

Sec. 24. The account shall not be allowed by the court, until it be first proven that notice has been given as required by this chapter; and the decree shall show that such proof was made to the satisfaction of the court, and shall be conclusive evidence of the fact.

Sec. 25. The debts of the estate shall be paid in the following order:

1. Funeral expenses.
2. Expenses of the last sickness.
3. Debts having preference of the laws of the United States.
4. Public rates, taxes, and excise duties, due the territory.
5. Judgments rendered against the deceased in his lifetime, on which execution might have issued at the time of his death; and mortgages, in the order of the date of their filing in the recorder's office.
6. All other demands against the estate.

Sec. 26. The preference given in the preceding section to a mortgage, shall only extend to the proceeds of property mortgaged; if the proceeds of such property be insufficient to pay the mortgage, the part remaining unsatisfied shall be classed with other demands against the estate.

Sec. 27. If the estate be insufficient to pay all the debts of any one class, each creditor shall be paid a dividend in proportion to his claim; and no creditor of any one class shall receive any payment until all those of the preceding class shall have been fully paid.

Sec. 28. It shall be the duty of the executor or administrator, as soon as he may have sufficient funds in his hands, to pay the funeral expenses, and expenses of the last sickness, and the allowance made to the family of the deceased; and he may retain in his hands the necessary expenses of administration; but he shall not be obliged to pay any other debt, or any legacy, until as prescribed by this act, the payment has been ordered by the court.

Sec. 29. Upon the settlement of the accounts of the executor or administrator at the end of the year, as required in this act, the court shall make an order for the payment of the debts, as the circumstances of the estate shall require; if there be not sufficient funds in the hands of the executor or administrator, the court shall specify in the decree the sum to be paid each creditor.

Sec. 30. If there be any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or such part thereof as the holder would be entitled to if the claim were due, established or absolute, shall be paid into the court, where it shall remain to be paid over to the party when he shall become entitled thereto; or if he fail to establish his claim, to be paid over or distributed, as the circumstances of the case may require; provided that if any creditor whose claim has been allowed, but is not yet due, shall appear and assent to a deduction therefrom of the legal interest for the time the claim has yet to run, he shall be entitled to be paid accordingly.

Sec. 31. Whenever a decree shall have been made by the probate court for the payment of creditors, the executor or administrator shall be personally liable to each creditor for his claim, or the dividend thereon, and execution may be issued on such decree as upon a judgment in the district court, in favor of each creditor, and the same proceedings may be had under such execution, as if it had been issued from the district court. The executor or administrator shall also be liable on his bond to each creditor.

Sec. 32. When the accounts of the executor or administrator have been settled, and an order made for the payment of debts and distribution of the estate, no creditor whose name was not included in the order for payment, shall have any right to call upon the creditors who have been paid, or upon the heirs, legatees, or devisees to contribute for the payment of his claim; but if the executor or administrator shall have failed to give the notice to creditors as prescribed by this act, such creditor may recover on the bond of the executor or administrator, the amount of his claim, or such part thereof as he would have been entitled to had it been allowed; provided, that this section shall not apply to any creditor whose claim was not due ten months before the day of settlement, or whose claim was contingent, and did not become absolute ten months before such day.

Sec. 33. If all the debts shall have been paid by the first distribution, the court shall proceed to direct the payment of legacies, and the distribution of the estate among the heirs, legatees or other persons entitled; but if there be debts remaining unpaid, the court shall give such extension of time as may be reasonable, for the final settlement of the estate.

Sec. 34. At the time designated, or sooner, if within that time all the property of the estate shall have been sold, or there shall be sufficient funds in his hands to pay all the debts due by the estate, the executor or administrator shall render a final account, and pray a settlement of the estate.

Sec. 35. If he neglect to render his account, the same proceedings may be had as are prescribed in this article, in regard to first account to be rendered by him, and all the provisions of this chapter relative to the last mentioned account, and the notice and settlement thereof shall apply to his account, presented for final settlement.

CHAPTER IX.

Of the partition and distribution of the estate.

SEC. 1. At any time after six months after the time of issuing letters testamentary or of administration, any heir, legatee, or devisee may present his petition to the court, that the legacy or share of the estate to which he is entitled, may be given to him upon his giving bonds with security for the payment of his proportion of the debts of the estate.

SEC. 2. Notice of the application shall be given to the executor or administrator, and to all persons interested in the estate in the same manner that notice is required to be given of the settlement of the account of the executor or administrator.

SEC. 3. The executor, administrator, or any person interested in the estate, may appear and resist the application; or any other heir, legatee or devisee, may make a similar application for himself.

SEC. 4. If on the hearing it appear to the court that the estate is but little in debt, and that the share of the party or parties applying may be allowed, without injury to the creditors of the estate, the court shall make a decree in conformity with the prayer of the applicant or applicants; provided, each one of them shall first execute and deliver to the executor or administrator, a bond in such sum as shall be designated by the probate judge, and with sureties to be approved by him, payable to the executor or administrator; conditioned for the payment by the devisee or legatee whenever required, of his proportion of the debts due from the estate.

SEC. 5. Such decree may order the executor or administrator to deliver to the heir, devisee or legatee, the whole portion of the estate to which he may be entitled, or only a part thereof.

SEC. 6. If in the execution of such decree, any partition be necessary between two or more of the parties interested, it shall be made in the manner hereinafter prescribed.

SEC. 7. The costs of the proceedings, authorized by the preceding sections, shall be paid by the applicant, or if there be more than one, shall be apportioned among them.

SEC. 8. Whenever any bond has been executed and delivered under the provisions of the preceding sections, and the executor or administrator shall ascertain that is is necessary for the settlement of the estate to require the payment of any part of the money thereby secured, he shall petition the court for an order requiring the payment and shall have a citation issued and served on the party bound, requiring him to appear and show cause why the order shall not be made. At the hearing, the court, if satisfied of the necessity of the payment, shall make an order accordingly, designating the amount, and giving the time within which it shall be paid; and if the money be not paid within the time allowed, an action may be maintained by the executor or administrator on the bond.

SEC. 9. Upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or any heir, devisee or legatee, the court shall proceed to distribute the residue of the estate, if any, among the persons who are by law entitled.

SEC. 10. In the decree the court shall name the person and the portion or parts to which each shall be entitled; and such persons shall have the right to demand and recover their respective shares from the executor or administrator, or any person having the same in possession.

SEC. 11. The decree may be made on the application of the executor or administrator, or of any person interested in the estate, and shall only be made after notice has been given, in the manner required, in regard to an application for the sale of land by an executor or administrator. The court may order such further notice to be given, as it may deem proper.

SEC. 12. When the estate, real and personal, assigned to two or more heirs, devisees, or legatees, shall be in common and undivided, and the respective shares shall not be separated and distinguished, partition and distribution may be made by three disinterested persons; to be appointed commissioners for that purpose, by the probate judge, who shall be duly sworn to the faithful discharge of their duties; and the court shall issue a warrant to them for that purpose.

SEC. 13. If the real estate be in different counties, the probate court may, if it shall judge proper, appoint different commissioners for each county, and in such cases the estate in each county shall be divided separately as if there were no other estate to be divided; but the commissioners first appointed shall, unless otherwise directed by the probate court, make division of such real estate, wherever situated within the territory.

SEC. 14. Such partition and distribution may be ordered on the petition of any of the persons interested in the estate; but before any partition shall be ordered, as directed in this chapter, notice shall be given to all persons interested, who shall reside in this territory, or to their guardians, and to agents, attorneys or guardians, if there be any in this territory, of such as reside out of the territory, either personally or by public notice, as the probate judge may direct.

SEC. 15. Partition of the real estate may be made as provided in this chapter, although some of the original heirs or devisees may have conveyed their shares to other persons; and such shares shall be assigned the person holding the same in the same manner as they otherwise would have been to such heirs or devisees.

SEC. 16. The several shares in the real and personal estate, shall be set out to each individual in proportion to his right, by such metes, bounds or descriptions, that the same may be easily distinguished; unless two or more of the parties shall consent to have their shares set out, so as to be held by them in common and undivided.

SEC. 17. When any such real estate cannot be divided without prejudice or inconvenience to the owners, the probate court may assign the whole to one or more of the parties entitled to share therein, who will accept it, always prefering the males to the females, and among children, preferring the elder to the younger; provided the party so accepting the whole, shall pay to the other parties interested, their just proportion of the true value thereof, or secure the same to their satisfaction; and the true value of the estate shall be ascertained by commissioners appointed by the probate court, and sworn for that purpose.

SEC. 18. When any tract of land or tenement shall be of greater value than either party's share in the estate to be divided, and can not be divided without injury to the same, it may be set off by the commissioners appointed to make partition to either of the parties, who will accept it, giving preference as prescribed in the preceding sections; provided the party so accepting shall pay or secure to one or more of the others, such sums as the commissioners shall award to make the partition equal, and the commissioners shall make their award accordingly; but such partitions shall not be established by the court, until the sums so awarded shall be paid to the parties entitled to the same, or secured to their satisfaction.

SEC. 19. When it cannot be otherwise fairly divided, the whole or any part of the estate, real or personal, may be recommended by the commissioners to be sold; and if the report be confirmed, the court may order a sale by the executor or administrator, or by an agent appointed for the purpose, and distribute the proceeds.

SEC. 20. When partition of real estate among heirs or devisees shall be required, and such real estate shall be undivided and in common with the real estate of any other person, the commissioners shall first divide and sever the estate of the deceased from the estate with which it lies in common, and such division so made and established by the probate court, shall be binding upon all the persons interested.

SEC. 21. Before any partition shall be made, or any estate divided as provided in this chapter, guardians shall be appointed for all minors and insane persons interested in the estate to be divided; and some discreet person shall be appointed to act as agent for such parties as reside out of the territory, and notice of the appointment of such agent shall be given to the commissioners in their warrant; and notice shall be given to all persons interested in the partition, their guardians or agents, by the commissioners, of the time when they shall proceed to make partition.

SEC. 22. The commissioners shall make a report of their proceedings to the probate court in writing, and the court may for sufficient reasons set aside such report, and remit the same to the same commissioners, or appoint others; and the report, when finally accepted and established, shall be recorded in the probate court, and a copy thereof attested by the judge of probate under the seal of court, shall be recorded in the office of the recorder of the county where the land lies.

SEC. 23. When the probate court shall make a decree assigning the residue of any estate to one or more persons entitled to the same, it shall not be necessary to appoint commissioners to make partition or distribution of such estate, unless the parties to whom the assignment shall have been decreed, or some of them shall request that such partition be made.

SEC. 24. All questions as to advancements made, or alleged to have been made by the deceased to any heirs, may be heard and determined by the probate court, and shall be specified in the decree assigning the estate, and in the warrant to the commissisners, and the final decree of the probate court, or in case of appeal, of the district or supreme courts, shall be binding on all parties interested in the estate.

SEC. 25. When any estate shall have been assigned by decree of ourt, or distributed by commissioners as provided in this chapter, ny person residing out of this territory, and having no agent therein, d it shall be necessary that some person should be authorized to take ossession and charge of the same for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absentee in the partition and distribution.

SEC. 26. Such agent shall give a bond to the territory of Oregon, to be approved by the probate judge, conditioned faithfully to manage and account for such estate, before he shall be authorized to receive the same; and the court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses.

SEC. 27. When the estate shall have remained in the hands of the agent unclaimed for one year, it shall be sold under the order of the court, and the proceeds, deducting the expenses of sale, to be allowed by the court, shall be paid into the territorial treasury. When the payment is made, the agent shall take from the treasurer duplicate receipts, one of which he shall file in the office of the territorial auditor, and the other in the probate court.

SEC. 28. The agent shall be liable on his bond for the care and preservation of the estate, while in his hands, and for the payment of the proceeds of sale, as required by the preceding section; and may be sued thereon by any person interested.

SEC. 29. When any person shall appear and claim the money paid into the treasury, the probate court making the distribution, being first satisfied of his right, shall grant him a certificate under its seal, and upon the presentation of the certificate to the auditor, he shall draw his warrant on the treasurer for the amount.

SEC. 30. When the estate has been fully administered, and it shall have been shown by the executor or administrator, by the production of satisfactory vouchers that he has paid all sums of money due from him, and delivered up under order of the court, all property of the estate to the persons entitled, the court shall make a decree discharging him from all liability to be incurred thereafter.

SEC. 31. The final settlement of the estate shall not prevent a subsequent issuance of letters of administration, should other property of the estate be discovered, or it should become necessary and proper from any cause, that letters should be again issued.

CHAPTER X.

Miscellaneous provisions.

SEC. 1. All orders and decrees made by the probate court during its terms, shall be entered at length on the records of the court; and also all orders which the judge is empowered to make out of term-time, and which are by this act specially required to be so entered; and upon the close of each term, the judge shall sign the minutes of the proceedings.

SEC. 2. Whenever personal notice is required by this act to be given to any party to a proceeding in the probate court, and no other mode of giving notice is prescribed, it shall be given by citation issued from the court signed by the judge, and under the seal of the court directed to the sheriff of the proper county, requiring him to cite such person to appear before the court or judge, as the case may be, at a time and place to be named in such citation. In the body of the citation shall be briefly stated the nature or character of the proceedings.

SEC. 3. The officer to whom the citation is directed, shall serve it by delivering a copy to the person named therein, or to each of them if there be more than one; and shall return the original to the court, according to its direction, endorsing thereon the time and manner of service.

SEC. 4. When no other time has been specially prescribed, citation shall be served at least five days before return day.

SEC. 5. All writs and processes issued from the probate court shall be signed by the judge, and under the seal of the court.

SEC. 6. The practice in the district court shall be applicable to proceedings in the probate court, so far as the same does not conflict with any enactment specially applicable to the probate court, or is not inconsistent with the provisions of this act, or an act to provide for the appointment, and prescribe the duties of guardians.

CHAPTER XI.

Descent of real estate.

SEC. 1. When any person shall die seized of any lands, tenements, or hereditaments, or any right thereto, or entitled to any interest therein in fee simple, or for the life of another, not having lawfully devised the same, they shall descend, subject to his debts, as follows:

1. In equal shares to his children, and to the issue of any deceased child by right of representation; and if there be no child of the intestate living at the time of his death, his estate shall descend to all his other lineal descendants; and if all the said descendants are in the same degree of kindred to the intestate, they shall have the estate equally, otherwise, they shall take according to representation.

2. If he shall leave no issue, his estate shall descend to his father.

3. If he shall leave no issue, nor father, his estate shall descend in equal shares to his brothers and sisters, and to the children of any deceased brother or sister by right of representation; provided that, if he shall leave a mother also, she shall take an equal share with the brothers and sisters.

4. If the intestate shall leave no issue, nor father, and no brother nor sister living at his death, his estate shall descend to his mother, to the exclusion of the issue of his deceased brothers or sisters.

5. If the intestate shall leave no issue, father, mother, brother, nor sister, his estate shall descend to his next of kin in equal degree; excepting that, when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor more remote; *provided however*,

6. If any person shall die leaving several children, or leaving one child, and the issue of one or more others, and any such surviving child shall die

under age, and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent, shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who shall have died, by right of representation.

7. If at the death of such child, who shall die under age, and not having been married, all the other children of his said parent shall also be dead, and any of them shall have left issue, the estate that came to such child by inheritance from his said parent, shall descend to all the issue of the other children of the same parent; and if all the said issue are in the same degree of kindred to the said child, they shall share the estate equally; otherwise, they shall take according to the right of representation.

8. If the intestate shall leave no kindred, his estate shall escheat to the territory.

Sec. 2. Every illegitimate child shall be considered an heir of his mother, and shall inherit her estate in whole or in part as the case may be, in like manner as if he had been born in lawful wedlock; but such illegitimate child shall not be allowed to claim, as representing his mother, any part of the estate of her kindred, either lineal or collateral.

Sec. 3. If any illegitimate child shall die intestate, without lawful issue, his estate shall descend to his mother; excepting in the case provided for in the following section.

Sec. 4. When after the birth of an illegitimate child, his parents shall intermarry, and his father after the marriage shall acknowledge him as his child, such child shall be considered legitimate to all intents and purposes.

Sec. 5. The degrees of kindred shall be computed according to the rules of the civil law; and the kindred of the half blood shall inherit equally with those of the whole blood in the same degree.

Sec. 6. Any estate, real or personal, that may have been given by the intestate in his lifetime, as an advancement to any child or other lineal descendant, shall be considered a part of the intestate's estate, so far as regards the division and distribution thereof among his issue, and shall be taken by such child or other descendant towards his share of the intestate's estate.

Sec. 7. If the amount of such advancement shall exceed the share of the heir so advanced, he shall be excluded from any further portion in the division and distribution of the estate, but he shall not be required to refund any part of such advancement; and if the amount so received shall be less than his share, he shall be entitled to so much more as will give him his full share of the estate of the deceased.

Sec. 8. If any such advancement shall have been made in real estate, the value thereof shall, for the purposes of the preceding section, be considered as part of the real estate to be divided; and if it be in personal estate; and if in either case it shall exceed the share of real or personal estate respectively that would have come to the heir so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate as will make the whole share equal to those of the other heirs who are in the same degree with him.

SEC. 9. All gifts and grants shall be deemed to have been made in advancement, if expressed in the gift or grant to be so made, or if charged in writing by the intestate as an advancement, or acknowledged in writing as such by the child or other descendant.

SEC. 10. If the value of the estate so advanced shall be expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgement by the party receiving it, it shall be considered of that value in the division and distribution of the estate, otherwise it shall be estimated at its value when given.

SEC. 11. If any child or lineal descendant so advanced, shall die before the intestate, leaving issue, the advancement shall be taken into consideration in the division and distribution of the estate; and the amount thereof shall be allowed accordingly by the representatives of the heir so advanced, as so much received towards their share of the estate, in like manner as if the advancement had been made directly to them.

SEC. 12. Nothing contained in this chapter shall affect the title of a husband as tenant by curtesy, nor that of a widow as tenant in dower.

SEC. 13. The word "issue," as used in this chapter, includes all the lawful lineal descendants of the ancestor; and the words "real estate" include all lands, tenements and hereditaments, and all rights thereto, and all interests therein possessed, and claimed in fee simple, or for the life of a third person. Inheritance or "succession by right of representation" takes place when the descendants of any deceased heir take the same share or right in the estate of another person, that their parent would have taken if living. Posthumous children are considered as living at the death of their parent.

CHAPTER XII.

Distribution of personal estate.

SEC. 1. When any person shall die possessed of any personal estate, or of any right or interest therein, not lawfully disposed of by his last will, the same shall be applied and distributed as follows:

1. The widow, if any, shall be allowed all articles of her apparel or ornament, according to the degree and estate of her husband, and such provisions and other necessaries for the use of herself and the family under her care, as shall be allowed and ordered in pursuance of the provisions of this act, and this allowance shall be made, as well when the widow waives the provision made for her in the will of her husband, as when he dies intestate.

2. The personal estate remaining after such allowance, shall be applied to the payment of the debts of the deceased, with the charges for his funeral and the settling of the estate.

3. The residue, if any, of the personal estate, shall be distributed among the same persons as would be entitled to the real estate by the eleventh chapter of this act, and in the same proportion as there prescribed, excepting as is herein further provided.

4. If the intestate were a married woman, her husband shall be entitled to the whole of the said residue of the personal estate.

5. If the intestate leave a widow and issue, the widow shall be entitled to one-half of said residue.

6. If there be no issue, the widow shall be entitled to the whole of said residue.

7. If there be no husband, widow or kindred of the intestate, the whole shall escheat to the territory.

SEC. 2. If the intestate leave a widow and issue, and any of the issue shall have received an advancement from the intestate in his lifetime, the value of such advancement shall not be taken into consideration in computing the one-half part to be assigned to the widow; but she shall be entitled to the one-half only of the said residue after deducting the value of the advancement.

CHAPTER XIII.

Of parents and children.

SEC. 1. Parents shall be bound to maintain their children when poor and unable to work to maintain themselves; and children shall be bound to maintain their parents in the like circumstances.

SEC. 2. If any minor who has a father living, have property, the income of which is sufficient for his maintenance and education in a manner more expensive than the father can reasonably afford, regard being had to the situation of the father's family, and to all the circumstances of the case, the expenses of the maintenance and education of such child may be defrayed out of the income of his own property, in whole or in part, as shall be judged reasonable by the probate court, and the charges therefor may be allowed accordingly in the settlement of the accounts of his guardian.

SEC. 3. Minor children may be bound as apprentices or servants by their father, and in case of his decease, by their mother in the chapter.

SEC. 4. The mother of an illegitimate child shall have power to bind him during the lifetime of the putative father, as well as after his decease.

SEC. 5. The power of the mother to bind her children, whether legitimate or illegitimate, shall cease in case of her subsequent marriage, and shall not be exercised during the continuance of such marriage, either by herself or her husband.

CHAPTER XIV.

Of guardians and wards.

SEC. 1. The judge of probate for each county, when it shall appear to him necessary or convenient, may appoint guardians to minors and others being inhabitants or residents in such county, and also to such as shall reside without this territory, and have any estate within the same.

SEC. 2. If the minor is under the age of fourteen years, the judge of probate may nominate and appoint his guardian, and if he is above that age he may nominate his own guardian, who, if approved by the judge, shall be appointed accordingly; and if the guardian, nominated by such minor, shall not be approved by the judge, *or if the minor shall reside* without this territory, or if after having been cited by the judge, he shall neglect to nominate a suitable person, the judge may nominate and appoint the guardian, in the same manner as if the minor were under fourteen years of age.

SEC. 3. When such minor, being above the age of fourteen years, shall reside more than ten miles from the place of holding the probate court, his nomination of a guardian may be certified to the judge of probate by a justice of the peace, which shall have the same effect as if made in the presence of the judge.

SEC. 4. Every guardian so appointed shall have the custody and tuition of the minor, and the care and management of his estate, and shall continue in office until the minor shall have arrived to the age of twenty-one years, or until the guardian shall have been discharged according to law; *provided however,* that the father of the minor if living, and in case of his death, the mother, while she remains unmarried, being themselves respectively competent to transact their own business, shall be entitled to the custody of the person of the minor, and to the care of his education.

SEC. 5. Every such guardian shall give bond, with surety or sureties to the territory of Oregon, in such sum as the judge of probate may order, with conditions, as follows:

1. To make a true inventory of all the real estate, and of all the *goods, chattels, rights and credits of the* ward that shall come to his possession or knowledge, and to return the same into probate court at such time as the judge may order.

2. To dispose of and manage all such estate and effects according to law, and for the best interest of the ward; and faithfully to discharge his trust in relation thereto, and in relation to the custody, education and maintenance of the ward.

3. To render on oath an account of the property in his hands, including the proceeds of all real estate sold by him, and of the management and disposition of all such property within one year after his appointment, and at such other times as the judge of probate shall direct.

4. At the expiration of his trust to settle his accounts with the probate judge, or with the ward, or his legal representatives, and to pay and deliver over all the estate and effects remaining in his hands, or due from him on such settlement to the person or persons who shall be lawfully entitled thereto.

SEC. 6. Every father may by his last will in writing, appoint a guardian or guardians for any of his children, whether born at the time of making the will or afterwards, to continue during the minority of the child, or for a less time; and every such testamentary guardian shall have the same powers, and perform the same duties with regard to the person and estate of the ward, as a guardian appointed by the judge of probate.

SEC. 7. Every such testamentary guardian shall give bond in like manner, and with like conditions as is before required of a guardian appointed by the judge of probate; provided that when the testator in the will appointing the guardian, shall have ordered or requested that such bond shall not be given, the bond shall not be required, unless from a change in the situation or circumstances of the guardian, or for other sufficient cause the judge of probate shall think proper to require it.

Sec. 8. Nothing contained in this chapter shall impair the power of the supreme court, the district court, probate court, or courts of a justice of the peace, to appoint a guardian to defend the interests of any minor impleaded in such courts, or interested in any suit or matter therein pending; nor their power to appoint or allow any person as next friend for a minor to commence, prosecute or defend any suit in his behalf.

Sec. 9. When the relations or friends of any insane person, or any other persons, inhabitants of the county in which such insane person resides, shall apply to the probate judge by petition in writing, to have a guardian appointed for him, the judge shall cause notice to be given to the supposed insane person of the time and place appointed for hearing the case, not less than ten days before the time so appointed, and if after a full hearing it shall appear to the probate judge that the person in question is incapable of taking care of himself, the judge shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

Sec. 10. Every guardian so appointed for an insane person, shall have the care and custody of the person of the ward and the management of all his estate until the guardian shall be legally discharged; and he shall give bond to the territory of Oregon in like manner and with like conditions, as is before prescribed, with respect to the guardian of a minor, excepting that the provision relating to the education of the ward, shall be omitted in the condition of the bond.

Sec. 11. When any person by excessive drinking, gaming, idleness, or debauchery of any kind, shall so spend, waste, or lessen his estate, as to expose himself, or his family to want or suffering, or the county to charge and expense for the support of himself and family, the county commissioners for such county of which such spendthrift is a resident or an inhabitant, may present a complaint to the probate judge, setting forth the facts and circumstances of the case, and praying to have a guardian appointed for him.

Sec. 12. The probate judge shall cause notice to be given to such supposed spendthrift of the time and place appointed for hearing the case, not less than ten days before the time so appointed; and if after a full hearing, it shall appear to the probate judge that the person complained of comes within the description contained in the preceding section, he shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

Sec. 13. After the order of notice has been issued, the complainants may cause a copy of the complaint, with the order of notice, to be filed in the office of the recorder of deeds for the county, and if a guardian shall be appointed on such application, all contracts, excepting for necessaries, and all gifts, sales or transfers of real or personal estate made by such spendthrift, after such filing of the complaint in the recorder's office, and before the termination of the guardianship, shall be null and void.

Sec. 14. When a guardian shall be appointed for an insane person, or a spendthrift, the judge shall make an allowance, to be paid by the guardian, for all reasonable expenses incurred by the ward in defending himself against the complaint.

Sec. 15. Every guardian so appointed for a spendrhrift, shall have the care and custody of the person of the ward, and the management of all his estate, until the guardian shall be legally discharged; and he shall give bond to the territory of Oregon, in like manner, and with like condition as is before directed with respect to the guardian of an insane person.

SEC. 16. Every guardian appointed under the provisions of this chapter, shall pay all just debts due from his ward, out of his personal estate, if sufficient, and if not, out of his real estate upon obtaining a license for the sale thereof as provided by law; he shall also settle all accounts of the ward, and demand, sue for and receive all debts due to him, or may, with the approbation of the judge of probate, compound for the same, and give a discharge to the debtor, upon receiving a fair and just dividend of his estate and effects; and he shall appear for, and represent his ward in all legal suits and proceedings, unless where another person is appointed for that purpose, as guardian or next friend.

SEC. 17. The guardian shall also manage the estate of his ward frugally and without waste, and apply the income and profits thereof, so far as may be necessary for the comfortable and suitable maintenance and support of the ward and his family, if there be any; and if the income and profits be insufficient for that purpose, the guardian may sell the real estate upon obtaining a license therefor as provided by law, and shall apply the proceeds of such sale, so far as may be necessary for the maintenance and support of the ward and his family.

SEC. 18. Upon the taking of any inventory as required by this chapter, the estate and effects comprised therein shall be appraised by three suitable persons, to be appointed and sworn in like manner as is required with respect to the inventory of a deceased testator or intestate; and every guardian shall account for and dispose of the personal estate of his ward, in like manner as is directed with respect to executors and administrators.

SEC. 19. The judges of probate, in their respective counties, on the application of a guardian or of any person interested in the estate of any ward, after notice to all other persons interested, may authorize or require the guardian to sell and transfer any stock in the public funds, or in any bank, insurance company, or other corporation, or any other personal estate, or effects held by him as guardian, and invest the proceeds of such sale, and also, all other moneys in his hands, in real estate, or in any other manner that shall be most for the interest of all concerned therein; and the probate court may make such further order and give such directions as the case may require for managing, investing and disposing of the estate and effects in the hands of the guardian.

SEC. 20. When any guardian, appointed either by a testator or by the judge of probate, shall become insane or otherwise incapable of discharging his trust, or evidently unsuitable therefor, the judge of probate, after notice to such guardian, and to all others interested, may remove him; and every guardian, upon his request, may be allowed to resign his trust, when it shall appear to the judge of probate proper to allow the same; and upon every such resignation or removal, and also, upon the death of any guardian, the judge of probate may appoint another in his stead.

SEC. 21. The marriage of any female, who is under guardianship as a minor, shall operate as a discharge of her guardian; and the guardian of any insane person, or spendthrift, may be discharged by the probate judge, when it shall appear to him, on the application of the ward, or otherwise, that such guardianship is no longer necessary.

SEC. 22. The probate court may require a new bond to be given by any guardian, and may discharge the existing sureties from future responsibility, in the like case, and upon the like terms as are prescribed with regard to executors or administrators.

SEC. 23. No action shall be maintained against the sureties in any bond given by a guardian, unless it be commenced within three years from the time when this chapter shall take effect, or within three years from the time when such guardian shall be discharged; *Provided*, that if at the time of such discharge, the person entitled to bring such action shall be out of the Territory, the action may be commenced at any time within three years after his return to the Territory.

SEC. 24. Upon complaint made to the probate judge by any guardian or by the ward, or by any creditor or other person interested in his estate, or by persons having claims thereto by expectancy as heir or otherwise against any one suspected of having concealed, embezzled, or conveyed any of the money, goods or effects of the ward, the judge may cite and examine such suspected person, and proceed with him as to such charge, in the same manner as is provided respecting persons suspected of concealing or embezzling the effects of a deceased testator or intestate.

SEC. 25. When any minor or other person liable to be put under guardianship, according to the provisions of this chapter, shall reside without this territory, and shall have any estate therein, any friend of such person, or any one interested in his estate in expectancy or otherwise, may apply to the judge of probate for any county in which there may be any estate of such absent person, and after notice to all persons interested, to be given in such manner as the judge shall order, and after a full hearing and examination, if it shall appear to him proper, he may appoint a guardian for such absent person.

SEC. 26. Every guardian appointed according to the provisions of the preceding section, shall have the same powers and duties with respect to any estate of the ward that may be found within this territory, and also with respect to the person of the ward if he shall come to reside therein, as are prescribed to any other guardian appointed by force of this chapter.

SEC. 27. Every such guardian shall give bond to the territory of Oregon in like manner, and with like condition as is above provided with respect to other guardians, excepting that the provisions respecting the inventory, the disposal of the estate, and effects which shall come to his hands in this territory, and that the provisions respecting the custody of the ward shall not be applicable, unless the ward shall come to reside in this territory.

SEC. 28. The guardianship, which shall first be lawfully granted of any person residing without this territory, shall extend to all the estate of the ward within the same, and shall exclude the jurisdiction of the probate court of any other county.

SEC. 29. Every guardian shall be allowed the amount of all his reasonable expenses incurred in the execution of his trust, and shall also have such compensation for his services, as the court in which his accounts are settled, shall be considered just and reasonable.

SEC. 30. When an account is rendered by two or more joint guardians, the judge of probate may, in his discretion, allow the same upon the oath of any one of them.

SEC. 31. The words "insane person" are intended to include every idiot, non compos lunatic, and distracted person; and the word "spendthrift" is intended to include any one who is liable to be put under guardianship on account of excessive drinking, gaming, idleness, or debauchery, and these words shall be so construed in all the provisions relating to guardians and wards contained in this or any other statute.

CHAPTER XV.

Of masters, apprentices, and servants.

SEC. 1. All children under the age of fourteen years, may be bound as apprentices or servants until that age; and all minors above the age of fourteen years may be bound as apprentices or servants, females until the age of eighteen years or to the time of their marriage within that age, and males until the age of twenty one years, in the manner prescribed in this chapter.

SEC. 2. Children under the age of fourteen years, may be bound by their father, or in case of his death or incompetency, by their mother, or by their legal guardian; and if illegitimate, they may be bound by their mother; and if they have no parent competent to act, and no guardian, they may bind themselves with the approbation of the probate judge of the county where they reside.

SEC. 3. Minors above the age of fourteen years may be bound in the same manner; provided, that when they are bound by their parent or guardian, the consent of the minor shall be expressed in the indenture, and testified by his signing the same.

SEC. 4. No minor shall be bound as aforesaid, unless by an indenture of two parts, sealed and delivered by both parties; and when made with the approbation of the probate judge, his approbation shall be certified in writing, signed by the judge on each part of the indenture.

SEC. 5. One part of the indenture shall be kept for the use of the minor by his parent or guardian, when executed by them respectively; and when made with the approbation of the probate judge, it shall be deposited in the probate office, and safely kept for the use of the minor.

SEC. 6. The county commissioners may bind as apprentices or servants, the minor children of any poor person who has become actually chargeable to their county, as having a lawful settlement therein, and also all minor children who are themselves chargeable to the county as having a legal settlement therein.

SEC. 7. Such children, whether under or over the age of fourteen years, may be bound, females to the age of eighteen, or to the time of their marriage within that age, and males to the age of twenty-one years; and provision shall be made in the contract for teaching such children to read, write and cipher, and for such other instruction, benefit and allowance, either within or at the end of the term as the county commissioners may think reasonable.

SEC. 8. No minor shall be bound by the county commissioners, unless by an indenture of two parts, sealed and delivered by the county commissioners, and by the master, one part of which shall be deposited with the probate judge for the county where such minor resides, and be safely kept by him for the use of the minor.

SEC. 9. All consideration of money or other things paid or allowed by the master upon any contract of service or apprenticeship made in pursuance of this chapter, shall be paid or secured to the sole use of the minor thereby bound.

SEC. 10. Parents, guardians, probate judges and county commissioners, shall inquire into the treatment of all children bound by them respectively, or with their approbation, and of all who shall have been bound by their predecessors in office, and defend them from all cruelty, neglect and breach of covenant, on the part of their masters.

SEC. 11. In case of any such misconduct or neglect of the master, a complaint may be filed by the parents, guardians, county commissioners, or other person in the probate court for the county in which the master resides, setting forth the facts and circumstances of the case; and the court, after having duly notified the master, shall proceed to hear and determine the cause, as the allegations of the parties may require.

SEC. 12. After a full hearing of the parties, or of the complaints alone, if the master shall neglect to appear, the court may render a judgment or decree, that the minor be discharged from his apprenticeship or service, and for the costs of the suit against the master, and may award execution accordingly, and the minor may thereupon be bound out anew.

SEC. 13. If the complaint shall not be maintained, the court shall award costs for the master against the complainant or complainants, and shall issue execution accordingly; excepting in that case of such a complaint by the county commissioners, the court shall not award costs against them, unless it shall appear that the complaint was made without any just or reasonable cause.

SEC. 14. Every master shall moreover be liable, whether such complaint shall have been filed or not, to an action in the circuit court on the indenture, for the breach of any covenant on his part therein contained; and all damages recovered in such action, after deducting the necessary charges in prosecuting the same, shall be the property of the minor, and may be applied and appropriated to his use, by the person who shall have recovered the same, and the residue, if any, shall be paid to the minor, if a male, at his age of twenty-one years, and if a female, at her age of eighteen years or at the time of her marriage within that age.

SEC. 15. Such action may be brought either by the parent or his executors or administrators, or by the guardian, or any one who shall succeed him in that trust, or by the county commissioners, or their successors in that office, or it may be brought in the name of the minor by his guardian or next friend, as the case may require, or by himself, after the expiration of the term of the apprenticeship or service.

SEC. 16. If the action be brought by the county commissioners, it shall not abate by the death of any of them, or by their being succeeded in office, but shall proceed in the names of the original plaintiffs, or the survivor of them, or the executors or administrators of the survivor, and the money recovered therein shall be deposited with the probate judge, to be applied and disposed of as provided in the fourteenth section.

SEC. 17. No such action shall be maintained by the apprentice, or servant, unless it be commenced during the term of apprenticeship or service, or within two years after the expiration thereof.

SEC. 18. If judgment in such action, by whomsoever brought, shall be rendered for the plaintiff in the district court, the court may also, upon the motion of the plaintiff, discharge the minor from his apprenticeship or service, if it shall have not been already done in the manner before provided, and the minor may thereupon be bound out anew.

SEC. 19. If any apprentice or servant bound as aforesaid, shall unlawfully depart from the service of his master, any justice of the peace, upon complaint on oath made to him by the master, or by any one in his behalf, may issue his warrant to apprehend the apprentice or servant, and bring him before said justice; and if the complaint shall be supported, the justice may order the offender to be returned to the master, or may commit him to the common jail of the county where the master resides, there to remain for a term not exceeding twenty days, unless sooner discharged by his master, or otherwise by due course of law.

SEC. 20. The warrant of the justice when directed to any officer or other person by name shall authorize him to convey the offender to the place of residence of the master, or to the jail of the county where the master resides, although it may be in any other county in this territory.

SEC. 21. All the costs incurred in any such process against a servant or apprentice, shall be paid in the first instance by the complainant; and if the complaint be supported, the amount of costs may be recovered by the master in an action on the indenture, if the same were executed by a parent or guardian, and if recovered against a guardian, the amount paid by him in such action, may be charged by him in his guardianship account; and if the indenture were executed by the county commissioners, or by the minor, with the approbation of the probate judge, the amount of such costs may be recovered in an action against the minor, after he shall arrive at full age.

SEC. 22. If any such apprentice shall be guilty of any gross misbehavior, or refusal to do his duty, or wilful neglect thereof, his master may file his complaint in the probate court for the county in which he resides, setting forth the facts and circumstances of the case, and the court, after having duly notified the apprentice or servant, and all persons who have covenanted on his behalf, and also the county commissioners who shall have approved of the indenture, or their successors in that office, shall proceed to hear and determine the cause, as the allegations of the parties may require.

SEC. 23. After a full hearing of the parties, or of the complainant alone, if the adverse party neglect to appear, the court may render a judgment or decree, that the master be discharged from the contract of apprenticeship or service, and for the costs of suit, such costs to be recovered of the parent or guardian of the minor, if there be any who executed the indenture, and execution therefor to be issued accordingly; and if there be no parent or guardian liable for such costs, the amount thereof may be recovered in an action against the minor after that he shall arrive at full age; and any minor discharged as aforesaid, may be bound out anew.

SEC. 24. No indendure of apprenticeship or service made in pursuance of this chapter shall bind the minor after the death of his master; but the apprenticeship or service shall be thenceforth discharged, and the minor may be bound out anew.

SEC. 25. Any indenture of apprenticeship or service made in pursuance of this chapter, by or in behalf of a minor, may be made either with a woman or a man, and all the foregoing provisions shall apply as well to mistresses as to masters.

SEC. 26. Nothing contained in this chapter shall prevent or affect the right of a father, by the common law, to assign or contract for the service of his children for the term of their minority or any part thereof.

CHAPTER XVI.

On wills.

SEC. 1. Every person of twenty-one years of age and upwards, of sound mind, may, by last will, devise all his estate, real and personal, saving to the widow her dower.

SEC. 2. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of his goods and chattels.

SEC. 3. No married woman shall be capable of making a will, unless she have power to do so by marriage settlement, or authority in writing, executed by her husband before marriage.

SEC. 4. Every will shall be in writing, signed by the testator, or by some other person under his direction, in his presence, and shall be attested by two or more competent witnesses, subscribing their names to the will, in the presence of the testator.

SEC. 5. Every person who shall sign the testator's name to any will by his direction, shall subscribe his own name as a witness to such will, and state that he subscribed the testator's name at his request.

SEC. 6. No will in writing, except in cases hereinafter mentioned, nor any part thereof shall be revoked, except by a subsequent will in writing, or by burning, cancelling, tearing or obliterating the same by the testator, or in his presence, and by his consent and direction.

SEC. 7. If after making a will, disposing of the whole estate of the testator, such testator shall marry and die, leaving issue by such marriage living at the time of his death, or shall leave issue of such marriage born to him after his death, such will shall be deemed revoked, unless provision shall have been made for such issue by some settlement, or unless such issue shall be provided for in the will, and no evidence shall be received to rebut the presumption of such revocation.

SEC. 8. A will made by an unmarried woman shall be deemed revoked by her subsequent marriage.

SEC. 9. A bond, covenant or agreement made for a valuable consideration by a testator, to convey any property devised, or bequeathed in any last will previously made, shall not be deemed a revocation of such previous devise or bequest either in law or equity; but such property shall pass by the devisee or bequest, subject to the same remedies on such bond, covenant or agreement for the specific performance or otherwise, against devisees or legatees, as might be had by law against the heirs of the testator, or his next of kin, if the same had descended to them.

Sec. 10. A charge or incumbrance upon any real or personal estate, for the purpose of securing the payment of money, or the performance of any covenant or agreement, shall not be deemed a revocation of any will relating to the same estate, previously executed; the devises and legacies therein contained shall pass and take effect, subject to such charge or incumbrance.

Sec. 11. If any person make his last will and die, leaving a child or children, or descendants of such child or children, in case of their death, not named or provided for in such will, although born after the making of such will, or the death of the testator, every such testator, so far as shall regard such child or children, or their descendants not provided for, shall be deemed to die intestate; and such child or children, or their descendants, shall be entitled to such proportion of the estate of the testator, real and personal, as if he had died intestate; and the same shall be assigned to them; and all the other heirs, devisees and legatees shall refund their proportional part.

Sec. 12. If such child or children, or their descendants, shall have an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they shall take nothing by virtue of the provisions of the preceding section.

Sec. 13. When any estate shall be devised to any child, grand-child, or other relative of the testator, and such devisee shall die before the testator, leaving lineal descendants, such descendants shall take the estate, real and personal, as such devisee would have done, in case he had survived the testator.

Sec. 14. If after making any will, the testator shall duly make and execute a second will, the destruction, cancelling or revocation of such second will shall not revive the first will, unless it appear by the terms of such revocation, that it was his intention to revive and give effect to the first will, or unless he shall duly republish his first will.

Sec. 15. The probate court shall take proof of last wills.

Sec. 16. If the testator have a mansion house or known place of abode in any county, his will shall be there proved; if he have no place of residence, and lands be devised, it shall be proved in the county where any part of the lands lie; and if he have no residence, and there be no lands devised, the will shall be proved in the county in which the testator died; or if he died out of the territory, then in any county.

Sec. 17. When any will is exhibted to be proven, the court may immediately receive the proof and grant a certificate of probate, or if such will be rejected, grant a certificate of rejection.

Sec. 18. If any witness be prevented by sickness from attending at the time when any will may be produced for probate, or reside out of the territory, or more than thirty miles from the place where the will is to be proven, such court may issue a commission, annexed to such will, and directed to any judge, justice of the peace, or mayor, or other person, empowering him to take and certify the attestation of such witness.

Sec. 19. If such witness appear before such officers, and make oath or affirmation that the testator signed the writing annexed to such commission, as his last will; or that some other person signed it by his direction, and in his presence; that he was of sound mind; that the witness subscribed his name thereto in the presence of the testator; the testimony so taken shall have the same force as if taken before the court.

Sec. 20. When one of the witnesses to such will shall be examined, and the other witnesses are dead, insane, or their residence unknown, then such proof shall be taken of the hand-writing of the testator, and of the witnesses insane, dead, or residence unknown, and of such other circumstances as would be sufficient to prove such will on a trial at common law.

Sec. 21. If it shall appear to the satisfaction of the court, that all the subscribing witnesses are dead, insane, or their residence unknown, the court shall take and receive such proof of the hand-writing of the testator and subscribing witnesses to the will, and of such other facts and circumstances as would be sufficient to prove such will in a trial at law.

Sec. 22. All the testimony adduced in support of any will, shall be reduced to writing, signed by the witnesses, and certified by the judge of probate.

Sec. 23. No nuncupative will shall be good when the estate bequeathed exceeds the value of two hundred dollars; nor unless the same be proven by two witnesses who were present at the making thereof; nor unless it be proven that the testator, at the time of pronouncing the same, did bid some person present to bear witness that such was his will, or to that effect; nor unless such nuncupative will was made at the time of the last sickness, and at the dwelling house of the deceased, or where he had been residing for the space of ten days or more, except where such person was taken sick from home, and died before his return.

Sec. 24. Any mariner at sea, or soldier in the military service, may dispose of his wages or other personal property, as he might have done by common law, or by reducing the same to writing.

Sec. 25. No proof shall be received of any nuncupative will, unless it be offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof were reduced to writing within thirty days after they were spoken.

Sec. 26. No probate of any nuncupative will shall be granted for fourteen days after the death of the testator, nor shall any nuncupative will be at any time proved, unless the testamentary words, or the substance thereof be first committed to writing, and a citation issued, accompanied with a copy thereof, to call the widow or next of kin of the deceased, that they may contest the will if they think proper.

Sec. 27. All wills shall be recorded by the probate judge in a book kept for that purpose, within thirty days after probate, and the originals shall be carefully filed.

Sec. 28. Every will, according to the provisions of this act, recorded and certified by the judge of probate, and attested by his seal of office, may be read as evidence, without any farther proof.

Sec. 29. The record of any will made, proved and recorded as aforesaid, and the exemplification of such record by the judge of probate, in whose custody the same may be, shall be received as evidence, and shall be as effectual in all cases as the original would be if produced and proven, and may in like manner be repelled by contrary proof.

Sec. 30. In all cases where lands devised by last will are situated in different counties, a copy of such will shall be recorded in the recorder's office in each county within six months after probate.

SEC. 31. If any person interested in the probate of any will, shall appear within five years after the probate or rejection thereof, and by petition to the district court for the county, contest the validity of the will, or pray to have the will proven, which has been rejected, an issue shall be made up, whether the writing produced be the will of the testator or not, which shall be tried by a jury, or if neither party require a jury, by the court.

SEC. 32. The verdict of the jury, or the finding and judgment of the court, shall be final, saving to the court the right of granting a new trial as in other cases, and to either party, an appeal in matters of law to the supreme court.

SEC. 33. If no person shall appear within the time aforesaid, the probate or rejection of such will shall be binding, saving to infants, married women, persons absent from the United States, or of unsound mind, a like period of five years after their respective disabilities are removed.

SEC. 34. In all trials respecting the validity of a will, if any subscribing witness be deceased, or cannot be found, the oath of such witness examined at the time of probate, shall be admitted as evidence, and shall have such weight as the court or jury may think it deserves.

SEC. 35. Any person not an inhabitant, but owning property, real or personal in this territory, may devise or bequeath such property by last will, executed and proved (if real estate be devised), according to the laws of this territory, or (if personal estate be bequeathed) according to the laws of this territory, or of the country, state or territory in which the will shall be proved.

SEC. 36. Copies of such will, and the probate thereof, shall be recorded in the same manner as wills executed and proven in this territory, and shall be admitted in evidence in the same manner, and with like effect.

SEC. 37. Any such will may be contested and annulled within the same time, and in the same manner as wills executed and proven in this territory.

SEC. 38. If any person has attested or shall attest the execution of any will, to whom any beneficial devise, legacy, estate, interest, gift or appointment of, or affecting any real or personal estate, other than or except charges in lands, tenements or hereditaments, for the payment of any debt or debts, shall be thereby given or made; such devise, legacy, estate, gift, or appointment shall so far only as concerns such person attesting the execution of such will, or any person claiming under him, be void, and such person shall be admitted as a witness to the execution of such will.

SEC. 39. If any such witness would be entitled to any share in the testator's estate, in case the will should not be established, then so much of the estate as would have descended, or would have been distributed to such witness, shall be saved to him, as will not exceed the value of the devise or bequest made to him in the will; and he may recover the same from the devisees or legatees named in the will, in proportion to, and out of the parts devised and bequeathed to him.

SEC. 40. If the execution of such will be attested by a sufficient number of other competent witnesses, as required by this act, then such devise, legacy, interest, estate, gift, or appointment shall be valid.

SEC. 41. If by any will, any real estate be charged with any debt, and any creditor whose debt is so charged, has attested the execution of such will, every such creditor shall be admitted as a witness to the execution of such will.

SEC. 42. If any person has attested, or shall attest the execution of any will, to whom any legacy or bequest is thereby given, and such person, before giving testimony concerning the execution of such will, shall have been paid, or have accepted or released, or shall refuse to accept such bequest or legocy upon tender thereof, such person shall be admitted as a witness to the execution of such will.

SEC. 43. The credit of such witness shall be subject to the consideration of the court or jury.

SEC. 44. If any legatee or devisee who has attested or shall attest the execution of any will, shall have died, or die in the lifetime of the testator, or before he shall have received or released the legacy or bequest so given to him, and before he shall have refused to receive such legacy or bequest, on a tender made thereof, such legatee or devisee shall be deemed a legal witness to the execution of such will.

SEC. 45. No person to whom any estate, gift, or appointment shall be given or made, which is hereby declared to be null and void, or who shall have refused to receive such legacy or bequest on tender made; and who shall have been examined as a witness concerning the execution of such will, shall, after he shall have been so examined, demand or receive, except as provided in the thirthy-ninth section, any profit or benefit of, or from any such estate, interest, gift, or appointment so given or made to him, by any such will or demand, receive, or accept from any person any such legacy or bequest, or any satisfaction or compensation for the same.

SEC. 46. If any person by last will, devise any real estate to to any person for the term of such person's life, and after his or her death, his or her children or heirs, or right heirs in fee, such devise shall vest an estate for life only only in such devisee, and remainder in fee simple in such children.

SEC. 47. In all devises of lands, or other estate in this territory, in which the words "heirs and assigns," or "heirs and assigns forever" are omitted, and no expressions are contained in such will, whereby it shall appear that such devise was intended to convey an estate for life only, and no further devise be made of the devised promises, to take effect after the death of the devisee, to whom the same shall be given; it shall be understood to be the intention of the testator thereby to devise an absolute estate in the same, and shall convey an estate in fee simple to the devisee for all such devised premises.

SEC. 48. When any testator, in his last will, shall give any chattel or real estate to any person, and the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees and heirs shall refund their proportional part of such loss to such person from whom the bequest shall be taken.

SEC. 49. When any devisees, legatees or heirs shall be required to refund any part of the estate received by them, for the purpose of making up the share, devise, or legacy of any other devisee, legatee or heir, the probate court shall, upon the petition of the person entitled to such contribution or distribution of such estate according to equity, and enforce such orders with like effect as decrees in courts of equity.

Sec. 50. The term "will," as used in this act, shall be so construed as to include all codicils as well as wills.

Sec. 51. All courts and others concerned in the execution of last wills, shall have due regard to the direction of the will, and the true interests and meaning of the testator in all matters brought before them.

Sec. 52. If the probate court shall be satisfactorily informed that any person has in his possession the will of any testator, and refuses to produce the same for probate; such court shall have power to summon such person, and compel him by attachment to produce the same.

CHAPTER —.

Of crimes and punishments.

Sec. 1. A crime, or public offence, is an act or omission forbidden by law, and punishable by death, imprisonment, fine, removal from office, or disqualification to hold or enjoy any office of honor, trust or profit, under the laws of this territory.

Sec. 2. A felony is a public offence punishable with death, or which is or may be punishable by imprisonment in the penitentiary.

Sec. 3. Every other public offence is a misdemeanor.

Sec. 4. All felonies and misdemeanors are, unless some other express provision is made by law indictable offences.

CHAPTER —.

Of the rights of persons who are accused of crimes and offences.

Sec. 1. No person shall be held to answer for a criminal offence, unless on the presentment or indictment of a grand jury; except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army or militia, when in actual service in time of war, or public danger.

Sec. 2. In all criminal prosecutions, the accused shall enjoy the right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process to compel the attendance of witnesses in his behalf; and in prosecutions by indictment or information, to a speedy public trial by an impartial jury of the county wherein the offence shall have been committed, except when the crime is committed on a lake, river, bay, sound, or other stream or body of water situate in two or more counties; or where the boundary lines of counties are not distinctly marked out, and there is doubt as to the county in which the crime was committed; then the trial may be had in any county bordering on such lake, river, bay, sound, or other stream or body of water, and opposite the place where the crime was committed, or in either county having such uncertain boundaries.

Sec. 3. No person indicted for an offence shall be convicted thereof, unless by confession of his guilt in open court, or by admitting the truth of the charge against him, by his plea or demurrer, or by the verdict of a jury, accepted and recorded by the court.

SEC. 4. No person shall be held to answer on a second indictment for an offence of which he has been acquitted by the jury, upon the facts and merits on a former trial; but such acquittal may be pleaded by him in bar of any subsequent prosecution for the same offence, notwithstanding any defect in the form or in the substance of the indictment on which he was acquitted.

SEC. 5. If any person indicted for an offence, shall on his trial be acquitted upon the ground of a variance between the indictment and the proof, or upon any exception to the form, or to the substance of the indictment, he may be arraigned again on a new indictment, and may be tried and convicted for the same offence, notwithstanding such former acquittal.

SEC. 6. No person charged with any offence against the law, shall be punished for such offence, unless he shall have been duly and legally convicted thereof, in a court having competent jurisdiction of the case, and of the person.

CHAPTER —.

Of offences against the lives and persons of individuals.

SEC. 1. If any person shall purposely, and of deliberate and premeditated malice, or in the perpetration, or attempt to perpetrate any rape, arson, robbery, or burglary, kill another, every such person shall be deemed guilty of murder in the first degree, and upon conviction thereof, shall suffer death.

SEC. 2. If any person shall, purposely and maliciously, but without deliberation and premeditation; or being engaged in the commission of any felony, other than rape, arson, burglary, and robbery, without any desire to effect death, kill another, every such person shall be deemed guilty of murder in the second degree, and on conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor during life.

SEC. 3. If any person shall, by an act imminently dangerous to others, and evincing a depraved mind, regardless of human life, although without any premeditated design to effect the death of any particular individual, kill another, such person shall be guilty of murder in the second degree, and shall upon conviction, be imprisoned in the penitentiary, and kept to hard labor during life.

SEC. 4. There shall be some other evidence of malice, than the mere proof of the killing, to constitute murder in the first or second degree, unless the killing was effected in the committing, or attempting to commit a felony; and deliberation and premeditation, when necessary to constitute murder in the first degree, shall be evidenced by poisoning, lying in wait, or some other express proof that the design was formed and matured in cool blood, and not hastily upon the occasion.

SEC. 5. Upon the trial of an indictment for murder, the jury, if they find the defendant guily, must inquire and by their verdict ascertain whether he be guilty of murder in the first or second degree; but if such defendant be convicted upon his own confession in open court, the court must proceed, by examination of witnesses, to determine the degree of murder, and award sentence accordingly.

SEC. 6. That the mode of inflicting punishment of death, in all cases under this act, shall be by hanging by the neck until the person be dead; and the sheriff, and in case of his death, inability, or absence, the coroner of the county in which sentence of death shall have been pronounced, by virtue of this act, shall be the executioner; except in cases where a change of venue has been taken, in which case, the prisoner shall be sent back and executed in the county in which the prosecution originated.

SEC. 7. The killing of a human being by the act, procurement, or omission of another, in cases where such killing shall not be murder, according to the provisions of this chapter, is either justifiable or excusable homicide, or manslaughter.

SEC. 8. Such homicide is justifiable when committed by public officers, and those acting by their command in their aid and assistance, either—

1. In obedience to any judgment of a competent court; or,

2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or the discharge of any other legal duty; or,

3. When necessarily committed in re-taking felons, who have been rescued, or who have escaped; or,

4. When necessarily committed in arresting felons fleeing from justice.

SEC. 9. Such homicide is also justifiable when committed by any person in either of the following cases:

1. When resisting any attempt to murder such person, or to commit any felony upon him or her, or upon or in any dwelling house in which such person shall be;

2. When committed in the lawful defense of such person, or of his, or her husband, wife, parent, child, master, mistress, or servant, when there shall be a reasonable ground to apprehend a design to commit a felony, or to do some great personal injury, and there shall be imminent danger of such design being accomplished;

3. When necessarily committed in attempting by lawful ways and means, to apprehend any person, for any felony committed; or in lawfully suppressing any riot; or in lawfully keeping and preserving the peace.

SEC. 10. Such homicide is excusable when committed—

1. By accident and misfortune, in lawfully correcting a child or servant; or in doing any other lawful act, by lawful means, with usual and ordinary caution, and without any unlawful intent;

2. By accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, without any undue advantange having been taken, and without any dangerous weapon being used, and not done in a cruel and unusual manner.

SEC. 11. Whenever it shall appear to the jury, on the trial of any person indicted for murder or manslaughter, that the alleged homicide was committed under circumstances or in cases where by law, such homicide was justifiable or excusable, the jury shall render a general verdict of not guilty.

SEC. 12. Manslaughter shall consist in the unlawful killing of a human being, without malice express or implied, and without any mixture of deliberation. It must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible; or involuntary, in the commission of an unlawful act, or a lawful act, without due caution or circumspection.

SEC. 13. Every person deliberately assisting another in the commission of self-murder, shall be deemed guilty of manslaughter.

SEC. 14. Any person who shall administer to any woman pregnant with a quick child, or prescribe for any such woman, or advise, or procure any such woman, to take any medicine, drug, or substance whatever, or shall use or employ any instrument or other means with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, shall, in case of the death of such child, or such mother, be thereby produced, be deemed guilty of manslaughter.

SEC. 15. If the owner of a mischievous animal, knowing its propensities, wilfully suffer it to go at large, or shall keep it without ordinary care, and such animal, while so at large, or not confined, kill any human being, who shall have taken the precautions which the circumstances may permit, to avoid such animal, such owner shall be deemed guilty of manslaughter.

SEC. 16. If any physician, while in a state of intoxication, shall without a design to effect death, administer any poison, drug or medicine, or do any other act to another person which shall produce the death of such other person, he shall be deemed guilty of manslaughter.

SEC. 17. Every other killing of a human being by the act, procurement, or culpable negligence of another, when such killing is not justifiable or excusable, or is not declared in this chapter to be murder, shall be deemed manslaughter.

SEC. 18. Any person convicted of manslaughter shall be punished by imprisonment in the penitentiary not less than one nor more than ten years, and by fine not exceeding five thousand dollars.

SEC. 19. Any person may be convicted of manslaughter under an indictment for murder, if the evidence fails to prove the latter, and establishes the former offence.

SEC. 20. Any person who shall be convicted of a rape, either,

1. By carnally and unlawfully knowing any female child under the age of ten years; or,
2. By forcibly ravishing any woman of the age of ten years, or upwards, shall be punished by imprisonment in the penitentiary not more than twenty nor less than three years; and if the rape shall have been committed upon a sister or a daughter, then the imprisonment shall be for life.

SEC. 21. Any peron who shall take any woman, unlawfully, against her will, and by force, menace, or duress, compel her to marry him, or to marry any other person, or to be defiled, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than seven years.

SEC. 22. Every person who, from premeditated design, evinced by laying in wait for the purpose, or in any other manner; or with intention to kill, or commit any felony, shall,

1. Cut out or disable the tongue; or,

2. Put out an eye; or,

3. Slit the lip, or slit or destroy the nose; or,

4. Cut off or disable any limb or member of another, on purpose, upon conviction thereof, shall be imprisoned in the penitentiary, not less than one nor more than twenty years.

SEC. 23. Every person who shall, by previous engagement or appointment, fight a duel within the jurisdiction of this territory, and in so doing shall inflict a wound upon any person, whereof the person so injured shall die, shall be deemed guilty of murder in the second degree.

SEC. 24. Every person who shall have been the second of either party, in such duel, as is mentioned in the preceding section, and shall have been present when such wound shall have been inflicted, whereof death shall ensue, shall be deemed to be an accessory before the fact, to the crime of murder in the second degree.

SEC. 25. Every person who shall fight a duel, or act as second, or surgeon at the same, by previous arrangement, without this territory, shall be incapable of voting or holding any office in this territory, thereafter.

SEC. 26. Any person who shall engage in a duel with any deadly weapon, although no homicide ensue, or shall challenge another to fight such duel, or shall send or deliver any verbal or written message, purporting or intending to be such challenge, although no duel ensue, shall be punished by imprisonment in the penitentiary not more than ten, nor less then two years, and shall be incapable of voting or holding any office of trust or profit under the laws of this territory.

SEC. 27. Every person who shall accept such challenge, or who shall knowingly carry or deliver any such challenge or message, whether a duel ensue or not; and every person who shall be present at the fighting of a duel with deadly weapons as an aid, second or surgeon, or who shall advise, encourage or promote such duel, shall be liable to imprisonment in the penitentiary not less than one nor more than two years.

SEC. 28. If any person shall post another, or in writing or print, shall use any reproachful and contemptuous language to, or concerning another for not fighting a duel, or for not sending or accepting a challenge, he shall be liable to imprisonment in the penitentiary not more than one year nor less than six months, or subject to a fine not exceeding five hundred, nor less than one hundred dollars.

SEC. 29. If any person shall assault and beat another with a cowhide, stick or whip, having at the time in his possession a pistol or other deadly weapon, with intent to intimidate and prevent the person assaulted from defending himself, such person shall on conviction, be imprisoned in the penitentiary not less than two or more than twenty years.

SEC. 30. If any person shall assault another with intent to murder or to maim, or to disfigure his person in any way, he shall be liable to imprisonment in the penitentiary not more than five years, nor less than one year, and by fine not exceeding one thousand, nor less than one hundred dollars.

SEC. 31. If any person shall attempt to commit the crime of murder, by poisoning, or by any other means not constituting an assault with intent to murder, every such offender, upon conviction thereof, shall be punished by imprisonment in the penitentiary, not less than one, nor more than ten years.

Sec. 32. If any person shall assault another, and shall feloniously rob, steal, and take from his person, any money, or other property which may be the subject of larceny, such robber being armed with a dangerous weapon, with intent if resisted, to kill or maim the person robbed; or if being so armed, he shall wound or strike the person robbed, he shall be liable to punishment by imprisonment in the penitentiary, not more than ten nor less than three years.

Sec. 33. If any person, armed with a dangerous weapon, shall assault another with intent to rob or murder, upon conviction, he shall suffer imprisonment in the penitentiary not more than five years, nor less than one year.

Sec. 34. If any person shall by force and violence, or by assault and putting in fear, feloniously rob, steal and take from the person of another, any money or other property which may be the subject of larceny, such robber not being armed with a dangerous weapon, he shall be liable to punishment by imprisonment in the penitentiary not more than three years, nor less than one year.

Sec. 35. If any person not armed with a dangerous weapon, shall assault another with force and violence, and with intent to rob or steal, he shall be subject to punishment by imprisonment in the penitentiary not more than two years, nor less than six months.

Sec. 36. If any person, either verbally or by any written or printed communication, shall maliciously threaten any injury to the person or property of another, with intent thereby to extort money or any pecuniary advantage whatever; or to compel the person so threatened to do any act against his will, he shall be punished upon conviction, by imprisonment not more than one year, nor less than six months, and by a fine not exceeding five hundred, nor less than one hundred dollars.

CHAPTER —.

Of offences against property.

Sec. 1. Any person who shall maliciously and wilfully, burn, in the night time the dwelling house of another, or shall, in the night time, wilfully and maliciously set on fire any other building, owned by himself or another, by the burning whereof such dwelling house shall be burned in the night time, shall suffer the same punishment, provided for the crime of murder in the second degree; but if at the time of committing the offence there were no person lawfully residing in the dwelling house so burned, he shall be subject to imprisonment in the penitentiary not more than ten, nor less than three years.

Sec. 2. Every person who shall wilfully and maliciously burn, in the day time, the dwelling house of another, or any building adjoining such dwelling, and shall wilfully and maliciously set fire to any building owned by himself or another, by the burning whereof such dwelling house shall be burned in the day time, or shall in the day time wilfully and maliciously set on fire any building owned by himself or another, by the burning whereof such dwelling house shall be burned in the night time, shall be liable to imprisonment in the penitentiary not more than fifteen nor less than five years.

Sec. 3. Any person who shall wilfully and maliciously burn in the night time, any meeting house, church, court house, town house, college, academy, jail, or other building erected for public uses, or any steamboat, ship or other vessel, or any express office, warehouse, store, manufactory or mill of another, or any barn, stable, shop or office of another, within the curtilage of any dwelling house or any other building, by the burning whereof any building mentioned in this section shall be burned in the night time, shall be subject to punishment by imprisonment in the penitentiary not more than fifteen nor less than five years.

Sec. 4. Every person who shall wilfully and maliciously burn in the day time, any building mentioned in the next preceding section, the punishment for which, if burned in the night time, would be imprisonment in the penitentiary not more than fifteen nor less than five years, shall be punished by imprisonment in the penitentiary not more than eight, nor less than four years.

Sec. 5. Every person who shall wilfully and maliciously burn any building whatsoever of another, other than are mentioned in the preceding sections of this act, or any bridge, lock, dam or flume, shall be liable to imprisonment in the penitentiary not more than eight nor less than four years; and every person who shall make an unsuccessful attempt to commit either of the offences mentioned in this or the preceding sections of this chapter, shall be liable to imprisonment in the penitentiary for a term not exceeding five years nor less than one year.

Sec. 6. Every person who shall wilfully and maliciously burn any pile or parcel of boards, timber, or other lumber, or any stack of hay, grain or other vegetable product, severed from the soil, but not stacked, or any standing grain, grass or other standing product of the soil, shall be subject to imprisonment in the penitentiary not more than two years, nor less than six months.

Sec. 7. The preceding sections shall severally extend to a married woman who may commit either of the offences therein described, though the property burned or set on fire may belong partly or wholly to her husband.

Sec. 8. Every person who shall break and enter any dwelling house in the night time, with intent to commit the crime of murder, rape, robbery, larceny, or any other felony, or after having entered with such intent, shall break any such dwelling house in the night time, any person then being lawfully therein, and the offender being armed with a dangerous weapon, at the time of such breaking or entering, or so arming himself in such house, or making any actual assault on any person lawfully therein, shall be liable to punishment by imprisonment in the penitentiary not more than twelve nor less than four years.

Sec. 9. Every person who shall break and enter a dwelling house in the night time, with such intent as is mentioned in the last preceding section, or who having entered with such intent, shall break such dwelling house in the night time, the offender not being armed, nor arming himself in such house with a dangerous weapon, nor making an assault upon any person being then lawfully therein, shall be liable to imprisonment in the penitentiary not more than five nor less than two years.

SEC. 10. Every person who shall break and enter, in the night time, any office, shop or warehouse, not adjoining to, or occupied with, a dwelling house, or any ship, steamboat or vessel, within the body of any county, with intent to commit the crime of murder, rape, robbery, larceny or any other felony, upon conviction, shall be punished by imprisonment in the penitentiary not more than five years nor less than one year.

SEC. 11. Every person who shall enter in the night time without breaking, or shall break and enter in the day time, any dwelling house or outhouse thereto adjoining, and occupied therewith, or any office, shop, store or warehouse, or any ship, steamboat or vessel, within the body of any county, with intent to commit the crime of murder, rape, robbery, larceny, or other felony, upon conviction, shall be punished by imprisonment in the penitentiary not more than three years, nor less than six months.

SEC. 12. Every person who shall commit the crime of larceny in any dwelling house, office, shop, warehouse, store, ship, steamboat, or vessel, or shall break and enter in the night time, or day time, any meeting house, church, court house, town house, college, academy or other public buildings erected for public use, and steal therein, upon conviction, shall be punished by imprisonment in the penitentiary not more than seven years, nor less than one year, or by imprisonment in the county jail not more than one year, nor less than three months, or by fine not exceeding five hundred dollars.

SEC. 13. Every person who shall commit the crime of larceny, by stealing of the property of another, any money, goods, chattels, or any bank note, bond, promissory note, bill of exchange, or other bill, order or certificate, or any book of accounts for or concerning money or goods due, or to become due, or to be delivered, or any deed, or writing containing a conveyance of land, or any other valuable contract in force, or any receipt, release or defeasance, or any writ, process, or public record, if the property stolen shall exceed the value of thirty-five dollars, shall be liable to punishment by imprisonment in the penitentiary not more than five years, nor less than one year; and if the property stolen shall not exceed the value of thirty-five dollars, he shall be liable to punishment by imprisonment in the county jail not more than two years, nor less than three months, or by fine, not exceeding three hundred, nor less than twenty dollars.

SEC. 14. Every person who shall commit the crime of larceny, by stealing any horse, mare, gelding, foal or mule of any value, shall, upon conviction thereof, be punished by imprisonment in the penitentiary not more than fifteen nor less than three years.

SEC. 15. If any person shall wilfully and knowingly make, alter, or deface any artificial ear mark or brand upon any horse, mare, gelding, foal, mule, ass, sheep, goat, swine, bull, cow, steer or heifer, the property of another, intending thereby to convert the same to his own use, he shall be deemed guilty of larceny, and upon conviction thereof, shall be punished by imprisonment in the penitentiary not more than five years, nor less than one year.

SEC. 16. Every justice of the peace shall have jurisdiction concurrent with the district court, of all the larcenies mentioned in the next preceding section of this chapter, when the money or propery stolen shall be alleged to exceed ten and less than twenty dollars; and exclusive jurisdiction of all larcenies whatever, when the money or other property stolen shall not be alleged to exceed the value of ten dollars, in all which cases the punishment shall be by fine not exceeding fifty, nor less than ten dollars, or by imprisonment in the county jail for the term of three months, saving to every person who shall be convicted before the justice, the right to appeal as in other cases.

SEC. 17. Every person who shall buy, receive, or aid in the concealment of stolen property, money or goods, knowing the same to have been stolen, shall, upon conviction thereof, be punished by imprisonment in the penitentiary not more than four years, nor less than one year, or by imprisonment in the county jail not more than two years, nor less than three months, or by fine not exceeding five hundred, nor less than one hundred dollars.

SEC. 18. Every justice of the peace shall have jurisdiction concurrent with the district court, or exclusive, as before provided, of all offences of buying, receiving or aiding in the concealment of stolen goods or other property, in all cases, in which they would have jurisdiction of a larceny of the same goods, or other property; and the punishment of buying, receiving, or aiding in the concealment of such goods or other property, shall be the same as in a case of a larceny of the same goods, or other property, with the same right of appeal on conviction.

SEC. 19. In any prosecution for the offence of buying, receiving, or aiding in the concealment of stolen money or other property known to have been stolen, it shall not be necessary to aver, nor on the trial thereof to prove that the person who stole such property, has been convicted.

SEC. 20. The officer who shall arrest any person charged as principal or accessory in any robbery or larceny, shall, if he be able, secure the property alleged to have been stolen, and shall be answerable for the same; and he shall annex a schedule thereof to his return of the warrant, and upon the conviction of the offender, the stolen property shall be restored to the owner.

SEC. 21. Upon any conviction of burglary, robbery or larceny, the court may order a suitable recompense to the prosecutor, and also to the officer who has secured and kept the stolen property, not exceeding their actual expenses, with a reasonable allowance for their time and trouble, to be paid by the county treasurer.

SEC. 22. If any officer, agent, clerk, or servant of any incorporate company, or if any clerk, agent, or servant of any private person, or of any co-partnership, except apprentices and other persons under the age of sixteen years, shall embezzle, or fraudulently convert to his own use, or shall take and secrete with the intent to embezzle and convert to his own use, without consent of his employers or master, any money or property of another, which shall have come into his possession, or be under his care by virtue of such employment, he shall be deemed by so doing to have committed the crime of larceny.

SEC. 23. If any carrier, or other person to whom any money, goods, or other property which may be the subject of larceny, shall have been delivered to be carried for hire, or if any other person who shall have been intrusted with such property, shall embezzle, or fraudulently convert to his own use, or shall secrete with intent to embezzle and convert to his own use, any money, goods, or property, either in the mass, as the same were delivered, or otherwise, and before delivery of such money, goods, or property at the places where or to the persons to whom they were to be delivered, he shall be deemed to have committed the crime of larceny.

SEC. 24. Any warehouse-man, storage, forwarding, commission merchant, or miller, or his or their agents, clerks or servants, who shall embezzle or fraudulently convert to his or their own use, or fraudulently sell or otherwise dispose of for their or his own gain, profit or advantage, without the consent of the owner thereof, any grain, flour, pork, beef, wool, or other goods, wares or merchandise, which shall have been received by such warehouse-man, miller, or storage, forwarding or commission merchant, to be stored for him or for any other purpose, shall be deemed to have committed the crime of larceny.

SEC. 25. If any person having in his possession any money belonging to this territory, or any county, town, city, or other municipal corporation or school district; or in which this territory, or any county, town, city, village, or corporation or school district has any interest; or if any collector or treasurer of any county, town incorporate city, town or village, or school district, or the treasurer, or other disbursing officer of the territory, or any other person holding an office under any law of this territory, or any officer of any incorporate company, who now is by virtue of his office, or shall hereafter be intrusted with the collection, safe keeping, receipt, transfer or disbursement of any tax, revenue, fine or other money, shall convert to his own use in any way or manner whatever, any part thereof, or shall loan, with or without interest, any portion of the money intrusted to him as aforesaid, or who shall wilfully neglect or refuse to pay over the same or any part thereof, according to the provisions of law, so that he shall not be able to meet the demands of any person lawfully demanding the same, whether such demand be made before or after the expiration of his office, he shall be deemed and adjudged guilty of an embezzlement.

SEC. 26. Any person who shall be deemed guilty of embezzling any money, prohibited by the last preceding section, not exceeding in amount the sum of one hundred dollars, shall, upon conviction thereof, be punished by imprisonment in the county jail not more than twelve nor less than three months; and any person convicted of embezzling a greater sum than one hundred dollars, shall be punished by imprisonment in the penitentiary not more than three years, nor less than one year, and by a fine in each case of twice the amount so embezzled; and if the court cannot determine from the verdict of the jury, or otherwise, the amount of the sum embezzled, they shall impose such fine as in their discretion as shall be adequate, and corresponding as nearly as possiwith the penalty imposed by this section; and any refusal by an officer to pay any sum lawfully demanded, shall be deemed an embezzlement of the same so demanded.

SEC. 27. No officer or other person mentioned in the twenty-fifth section of this chapter, shall be permitted to set up any private demand, as a set-off against any money he may have received by virtue of his office; and all justices of the peace, clerks of the district court, sheriffs and other officers, shall pay into the respective treasuries all the money collected on fines, within thirty days after said monies shall have been collected.

SEC. 28. If any warehouse-man, miller, or storage, forwarding, or commission merchant, or his or their servants, agents or clerks, shall wilfully and fraudulently make or utter any receipt or other written evidence of the delivery into any warehouse, mill, store, or other building belonging to him, them or either of them, or his or their employers, of any grain, flour, pork, beef or wool, or other goods, wares, or merchandise which shall not have been so received, or delivered into such mill, warehouse, store or other building, previous to the making and uttering of such receipt, or other written evidence thereof, upon conviction thereof, shall be punished by imprisonment in the penitentiary, not more than two years, nor less than one year.

SEC. 29. Every person who shall falsely represent or personate another, and in such assumed character shall receive any money or other property whatever, intended to be delivered to the party so personated, with intent to convert the same to his own use, shall be deemed by so doing to have committed the crime of larceny.

SEC. 30. If any person shall designedly, by any false pretence, or by any privy, or false token, and with intent to defraud, obtain from any other person any money, or goods, wares, or merchandise, or shall obtain with such intent the signature of any person, to any written instrument, the false making whereof would be punishable as forgery, he shall be subject to imprisonment in the penitentiary not more than five years, nor less than one year, or to fine not exceeding one thousand, nor less than fifty dollars.

SEC. 31. Any person convicted of any gross fraud or cheat at common law, shall be punished by imprisonment in the penitentiary, not more than four years, nor less than one year, or by fine not exceeding one thousand, nor less than fifty dollars.

SEC. 32. Every person who shall wilfully and maliciously kill, maim, or disfigure any horse, cow, ox, sheep, or other beast of another person; or shall wilfully and maliciously administer poison to any such beasts, or expose any poisonous substance with intent, that the same may be taken or swallowed by them; or shall wilfully and maliciously destroy or injure the personal property of another, in any manner, by any means not particularly mentioned or described in this chapter, upon conviction thereof, shall be punished by imprisonment in the county jail not more than two years, nor less than three months, or by fine not exceeding five hundred, nor less than fifty dollars.

SEC. 33. If any person shall falsely and fraudulently represent that he is the owner of any parcel or tract of land to which he has no title, and shall execute any deed of the same, with intent to defraud any person whatever, he shall upon conviction thereof, be imprisoned in the penitentiary not more than two years, nor less than six months.

SEC. 34. Every person who shall wilfully and maliciously break down, injure, remove or destroy any dam, reservoir, canal or trench, or any gate, flume, flash boards or other appurtenances thereof, or of the wheels, mill gear, or machinery of any mill; or shall wilfully or wantonly, and without color of right, draw off the water contained in any mill pond, reservoir, canal or trench, shall, upon conviction thereof, be punished by imprisonment in the penitentiary, not more than two years, nor less than six months, or by fine not exceeding four hundred, nor less than fifty dollars.

SEC. 35. Every person, who shall wilfully, or maliciously break down, injure, remove, or destroy any public or toll bridge, railroad, or plank road, or any turnpike or plank road gate, or any lock, culvert, or embankment of any canal, or shall maliciously, or wilfully make any aperture or breach in any such embankment, with intent to destroy or injure the same, upon conviction, shall be imprisoned in the penitentiary for not more than three years, nor less than six months, or pay a fine not exceeding six hundred, nor less than fifty dollars.

SEC. 36. If any person shall wilfully and maliciously set on fire, or cause to be set on fire, any woods, prairie, or other grounds, other than his own, or shall intentionally or by neglect permit the fire to pass his own premises or grounds to the injury of any other person or persons, every person so offending, shall on conviction thereof, for every such offence, be fined in a sum not exceeding five hundred, nor less than ten dollars.

SEC. 37. Every person who shall wilfully and maliciously, or wantonly and without cause, cut down and destroy, or by girdling, tapping or otherwise, shall injure any fruit tree, or any other trees not his own, standing or growing for shade, ornamental or other useful purposes; or shall maliciously or wantonly break the glass, or any part of it in any building not his own; or shall maliciously break down any fence belonging to or enclosing land not his own; or shall maliciously throw down or open any bars, gate or fence, and leave the same down or open; or shall maliciously and injuriously sever from the freehold of another, any produce thereof, or anything attached thereto, shall upon conviction, be imprisoned in the county jail not more than one year, nor less than three months, or pay a fine not exceeding two hundred, nor less than ten dollars.

SEC. 38. Every person who shall wilfully and maliciously break down, injure, remove or destroy any monument erected for the purpose of designating the boundaries of any tract or lot of land, or any tree marked for that purpose; or shall so break down, injure, remove or destroy any mile stone, mile board, or guide board erected upon any highway or other public way, turn-pike, railroad or plank road; or shall wilfully or maliciously deface or alter the inscription on any such stone or board; or shall wilfully or maliciously mar or deface any building or any sign-board, or shall extinguish any lamp, or break or remove any lamp or lamp-post, or any railing or post erected on any bridge, sidewalk, street, highway, court or passage, shall upon conviction be punished by fine not exceeding five hundred, nor less than fifty dollars, or by imprisonment in the county jail not more than six, nor less than three months.

SEC. 39. Every person who shall wilfully commit any trespass by entering upon the garden, orchard, or other improved land of another, without permission from the owner thereof, and with intent to cut, take, carry away, destroy or injure the trees, grain, grass, hay, fruit or vegetables there growing or being, shall, upon conviction, be punished by fine not exceeding fifty, nor less than three dollars.

SEC. 40. Every justice of the peace shall have concurrent jurisdiction in his own county, with the district court, of all offences mentioned in the last three preceding sections of this chapter, when the value of the trees, fruit, grain or other property injured, destroyed, taken or carried away, or the injury occasioned by the trespass shall not exceed the sum of one hundred dollars, and in such case the punishment shall be by fine, not exceeding fifty, nor less than five dollars.

CHAPTER —.

Of offences against character.

Sec. 1. A libel shall be construed to be a malicious defamation of a person, made public, either by any printing, writing, sign, picture, representation or effigy, tending to provoke him to wrath, or expose him to public hatred, contempt or ridicule, or to deprive him of the benefits of public confidence and social intercourse; or any malicious defamation, made public as aforesaid, designed to blacken and vilify the memory of one who is dead, and tending to scandalize or provoke his surviving relatives or friends.

Sec. 2. Every person who shall make, compose, dictate, write or print a libel, or who shall direct or procure the same to be done, or who shall wilfully publish or circulate such libel, or in any way knowingly and wilfully shall aid in making, publishing, or circulating the same, shall, upon conviction, be punished by imprisonment in the county jail not more than one year, and by fine not exceeding one thousand dollars.

Sec. 3. Every person managing or controlling the business of any printing office, book store or shop, whether for himself, or as agent for another; and every proprietor, editor, printer and publisher of any newspaper, pamphlet, book, or other publication shall be responsible for any libel, printed or published in any such office, bookstore or shop which he manages and controls as aforesaid; or in any newspaper, pamphlet, book, or other publication, of which he is in whole or in part proprietor, editor, printer or publisher; unless he can prove on trial that such libel was printed and published without his consent, knowledge or suspicion, and that by his using reasonable care and diligence, it was not in his power to have prevented the printing and publishing the same.

Sec. 4. In prosecutions for any publication respecting the official conduct of men in public capacity, or the qualifications of those who are candidates for the suffrages of the people, or where the matter published is proper for public information, the truth thereof may be given in evidence; and if established, it shall be held in complete justification.

Sec. 5. In the trial of any criminal prosecution for writing or publishing a libel, other than as mentioned in the preceding section, the defendant may give in evidence the truth of the matter charged as libelous; and the truth of such matter being established, the same shall be held a complete defence and justification, unless it shall be made to appear that the publication thereof originated from corrupt and malicious motives.

Sec. 6. If the publication of an alleged libel shall not be justified in any manner, as mentioned in the two preceding sections, the same shall be deemed to have been malicious, unless the contrary shall be fully and clearly proven.

SEC. 7. No printing, writing, or other thing shall be held to be a libel, unless there shall have been a publication thereof; and the delivery, selling, reading or otherwise communicating a libel, or causing the same to be delivered, sold, read, or otherwise communicated to one or more persons, or to the party libelled, shall be deemed a publication thereof.

SEC. 8. In all indictments for libels, the jury, after having received the direction of the court, shall have a right to determine, at their discretion, the law and the fact.

CHAPTER —.

Of forgery and Counterfeiting.

SECTION 1. Every person who shall falsely make, alter, forge, or counterfeit any public record, or any certificate, return, or attestation of any clerk of the court, register, notary public, justice of the peace, or any other public officer, in relation to any matter wherein such certificate, return, or attestation may be received as legal proof; or any charter, deed, will, testament, bond, writing obligatory, letter of attorney, policy of insurance, bill of lading, bill of exchange, promissory note, or any order, acquittance, or discharge for money or other property, any acceptance of a bill of exchange, indorsement or assignment of a bill of exchange, promissory note, or any accountable receipt for money, goods, or other property, with intent to injure or defraud any person, upon conviction, shall be punished by imprisonment in the penitentiary not more than ten nor less than two years, or by a fine of not more than ten thousand, nor less than one hundred dollars.

SEC. 2. Every person who shall utter and publish as true, any false, forged, or altered record, deed, instrument, or other writing, mentioned in the next proceeding section, knowing the same to be false, forged. or altered, with intent to injure or defraud as aforesaid, shall, on conviction, be punished by imprisonment in the penitentiary, not more than ten years nor less than one year.

SEC. 3. Every person who shall falsely make, alter, forge, or counterfeit any note, issued by any commissioner or other officer authorized to issue the same, for any debt of this territory, with intent to injure or defraud as aforesaid, shall, on conviction, be punished by imprisonment in the penitentiary, not more than ten nor less than three years.

SEC. 4. Every person who shall make, alter, forge, or counterfeit any bank bill, promisory note, draft, or other evidence of debt, issued by any corporation or company, duly authorized for that purpose by the laws of the United States, of any state of the United States, of this territory, of any territory of the United States, or of any other state, government or country, with intent to injure or defraud, shall, upon conviction, be punished by imprisonment in the penitentiary not more than ten years, nor less than one year.

SEC. 5. Every person who shall have in his possession any forged, counterfeit or altered bank bill, promisory note, draft, or other evidence of debt, issued, or purporting to have been issued, as is mentioned in the next preceding section, with intent to utter the same as true or false, knowing the same to have been so forged, counterfeited or altered, as aforesaid, shall, upon conviction, be punished by imprisonment in the penitentiary not more than five years, nor less than one year.

Sec. 6. Every person who shall utter or pass, or tender in payment as true, any false, altered, forged, or counterfeit note, certificate, or bill of credit for any debt of this territory, or bank bill, promissory note, draft or other evidence of debt, issued or purporting to have been issued, as is mentioned in the fourth section of this chapter, knowing the same to be false, altered, forged, or counterfeit, with intent to injure or defraud, shall, on conviction, be punished by imprisonment in the penitentiary not more than ten years, nor less than one year.

Sec. 7. Every person who shall engrave, make, or begin to engrave, make, or mend any plate, block, press, or other tool, instrument, or other implement, or shall make or provide any paper or other materials adapted and designed for the forging or making any false and counterfeit note, certificate, or other bill of credit, in the similitude of the notes, certificates, or bills of credit, issued by lawful authority for any debt of this territory, or any false, counterfeit note or bill in the similitude of the notes or bills issued by any bank or banking company established within the United States, or any territory thereof, or within any other government or country; and every person who shall have in his possession any such plate or block engraved in any part, or any press, or other tool, instrument or implement, paper or other material adapted and designed as aforesaid, with intent to use the same, or to cause or permit the same to be used in forging or making any such false and forged certificates, bills, or notes, shall, on conviction, be punished by imprisonment in the penitentiary not more than five years, nor less than one year, or by a fine of not more than five thousand, nor less than five hundred dollars.

Sec. 8. In all prosecutions for forging or counterfeiting any notes or bills of the banks before mentioned, or for uttering, publishing, or tendering in payment as true, any forged or counterfeit bank bills or notes, or for being possessed thereof with the intent to utter and pass them as true, the testimony of the president and cashier of such banks may be dispensed with, and the testimony of any person acquainted with the signature of the president or cashier of such banks, or who has knowledge of the difference in the appearance of the true and false bills or notes thereof, may be admitted to prove that any such bills or notes are counterfeit.

Sec. 9. In all prosecutions for forging or counterfeiting any note, certificate, bill of credit, or security issued on behalf of the United States, or on behalf of any State or territory, or for uttering, publishing or tendering in payment as true, any such forged or counterfeit note, certificate, bill of credit, or security, or for being possessed thereof, with intent to utter and pass the same as true, the certificate under oath of the secretary of the treasury, or of the treasurer of the United States, or of the secretary or treasurer of any State or territory, on whose behalf such note, certificate, bill of credit, or security purports to have been issued, shall be admitted as evidence, for the purpose of proving the same to be forged or counterfeited.

Sec. 10. If any person shall fraudulently connect together different parts of several bank notes, or other genuine instruments, in such manner as to produce an additional note, or instrument, with intent to pass all of them as genuine, the same shall be deemed a forgery in like manner, as if each of them had been falsely made or forged.

SEC. 11. If any fictitious or pretended signature, purporting to be the signature of an officer or agent of any corporation, shall be fraudulently affixed to any instrument or writing, purporting to be a note, draft or other evidence of debt issued by such corporation, with intent, to pass the same as true, it shall be deemed a forgery, though no such person may ever have been an officer or agent of such corporation, or such corporation ever have existed.

SEC. 12. In any case where the intent to defraud is necessary to constitute the offence of *forgery*, or any other offence that may be prosecuted, it shall be sufficient to allege in the indictment an intent to defraud without naming therein the particular person or body corporate, intended to be defrauded; and on the trial of such indictment, it shall be sufficient, and shall not be deemed a variance, if there appear to be an intent to defraud the United States, or any state, territory, county, city, town or village, or any body corporate, or any public officer in his official capacity, or any copartnership, or member thereof, or any particular person.

SEC. 13. Every person who shall counterfeit any gold or silver coin, current by law, or usage within this territory, and every person who shall have in his possession false money or coin, counterfeited in the similitude of any gold or silver coin, current as aforesaid, knowing the same to be false and counterfeited, and with the intent to utter or pass the same as true, and any person who shall utter, pass or tender in payment as true, any such counterfeit coin, knowing the same to be false and counterfeit, with intent to injure or defraud, shall, on conviction, be punished by imprisonment in the penitentiary not more than ten years, nor less than one year, or by a fine not exceeding five thousand, nor less than five hundred dollars.

SEC. 14. Every person who shall cast, stamp, engrave, make or mend, or shall knowingly have in his possession, any mould, pattern, die, puncheon, engine, press or other tool, or instrument adapted and designed for coining or making any counterfeit coin in the similitude of any gold or silver coin, current by law or usage in this territory, with intent to use the same, or cause or permit the same to be used or employed in coining or making any such false or counterfeit coin as aforesaid, shall, on conviction, be punished by imprisonment in the penitentiary not more than ten nor less than two years, or by fine not less than one hundred, nor more than five thousand dollars.

SEC. 15. Any person who may be convicted of the same offence a second time, shall be punished by imprisonment not exceeding twice the lowest term mentioned in the section under which he may be indicted and tried.

CHAPTER, —.

Offences against public justice.

SEC. 1. Every person being lawfully required to depose the truth in any proceedings in a court of justice, who shall commit perjury, shall be liable, if such perjury were committed on the trial of an indictment for a capital crime, to imprisonment in the penitentiary not more than fifteen nor less than three years, and if committed in any other case, to imprisonment in the penitentiary not more than ten, nor less than two years.

Sec. 2. If any person of whom an oath shall be required by law, shall wilfully swear falsely in regard to any matter or thing respecting which such oath is required, such person shall be deemed guilty of perjury.

Sec. 3. Every person who shall be guilty of subornation of perjury, by procuring another person to commit the crime of perjury as aforesaid, shall be punished in the same manner as for the crime of perjury.

Sec. 4. If any person shall endeavor to procure or incite any other person to commit the crime of perjury, though no perjury be committed, upon conviction, he shall be punished by imprisonment in the penitentiary not more than three years, nor less than one year.

Sec. 5. Whenever it shall appear to any court of record, that any witness or party who has been legally sworn and examined, or has made an affidavit in any proceedings in a court of justice, has testified in such a manner as to induce a reasonable presumption that he has been guilty of perjury therein, the court may take a recognizance with sureties, for his appearing to answer to an indictment for perjury, and thereupon the witnesses to establish such perjury, may be bound over to the proper court, and notice of the proceedings shall forthwith be given to the district attorney.

Sec. 6. If in any proceeding a court of justice in which perjury shall be reasonably presumed as aforesaid, and any papers, books, or documents shall have been produced, which shall be deemed necessary to be used in any prosecution for such perjury, the court may order a certified copy of such books, papers, or documents to be taken, to be used in such prosecution in the same manner as the original might have been.

Sec. 7. Every person who shall corruptly give, offer, or promise to any executive, judicial, or legislative officer, after his election or appointment, and either before or after he shall have been qualified, or shall have taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision, or judgment in any matter, question, cause, or proceeding which may then be pending, or may by law come or be brought before him in his official capacity, shall, upon conviction, be punished by imprisonment in the penitentiary not more than three years, nor less than one year, or by a fine not exceeding five thousand, nor less than one hundred dollars.

Sec. 8. Every executive, legislative or judicial officer who shall corruptly accept any gift or gratuity, or any promise to make any gift, or do any act beneficial to such officer, under an agreement, or with an understanding that his vote, opinion or judgment shall be given in any particular manner, or upon a particular side of any question, cause or proceeding, which is or may be by law brought before him in his official capacity, or that in such capacity he shall make any particular nomination or appointment, shall upon conviction, be punished by imprisonment in the penitentiary not more than four, nor less than two years, or by fine not exceeding one thousand, nor less than one hundred dollars.

Sec. 9. Every person who shall corrupt, or attempt to corrupt any court, commissioner, juror, arbitrator, umpire or referee, by giving, offering, or promising any gift or gratuity whatever, with intent to bias his opinion, or influence the decision of such court, commissioner, juror, arbitrator, umpire or referee, in relation to any cause or matter which may be pending in the court, or before an inquest, or for the decision of which such arbitrator, umpire or referee shall have been appointed, shall be punished, upon conviction, by imprisonment in the penitentiary not more than three years, nor less than one year, or by a fine not exceeding one thousand, nor less than one hundred dollars.

Sec. 10. If any person, summoned as a juror, or chosen or appointed as an arbitrator, umpire or referee, or if any court, or commissioner, shall corruptly take anything to give his verdict, award, or report, or shall corruptly receive any gift or gratuity whatever from a party to any suit, cause, or proceeding, for the trial or decision of which such juror shall have been summoned, or for the hearing or determining of which, such court, commissioner, arbitrator, umpire, or referee shall have been chosen or appointed, he shall, upon conviction, be punished by imprisonment in the penitentiary not more than three years, nor less than one year, or by a fine of not more than one thousand, nor less than one hundred dollars.

Sec. 11. Every person who shall convey into any penitentiary, jail, house of correction, house of reformation, or other like place of confinement, any disguise, or any instrument, tool, weapon, or other thing, adapted or useful in aiding any prisoner to make his escape, with intent to facilitate the escape of any prisoner there lawfully committed or detained, or shall, by any means whatever, aid or assist any such prisoner in his endeavor to escape therefrom, whether such escape be attempted or effected or not; and every person who shall forcibly rescue any prisoner held in custody, upon any conviction or charge of an offence, shall be liable to punishment by imprisonment in the penitentiary, not more than four nor less than two years; or if the person whose escape or rescue was effected or intended, was charged with an offence not capital, nor punishable by imprisonment in the penitentiary, the punishment for the offence mentioned in this section, shall be by imprisonment in the county jail not more than one year, or by fine of not more than five hundred, nor less than one hundred dollars.

Sec. 12. Every person who shall aid or assist any prisoner in escaping, or in attempting to escape from any officer or person who shall have the lawful custody of such prisoner, shall, on conviction, be punished by imprisonment in the penitentiary not more than four, nor less than two years, or by a fine not exceeding five thousand, nor less than one hundred dollars.

Sec. 13. If any jailor or other officer shall voluntarily suffer any prisoner in his custody, charged with, or convicted of any criminal offence to escape, he shall suffer, unless the prisoner were charged with or convicted of a capital offence, the like punishment and penalties as the prisoner so suffered to escape was sentenced to, or would be liable to suffer, upon conviction for the crime or offence wherewith he stood charged; and if the prisoner were charged with or convicted of a capital offence, he shall be punished by imprisonment in the penitentiary not more than twenty, nor less than five years.

SEC. 14. If any jailor or other officer shall, through negligence, suffer any prisoner in his custody, upon conviction, or upon any criminal charge to escape, or shall wilfully refuse to receive into his custody any prisoner lawfully committed thereto, on any criminal charge or conviction, or on any lawful process whatever, he shall, on conviction, be punished by imprisonment in the county jail not more than two years, or by a fine of not more than five hundred, nor less than one hundred dollars.

SEC. 15. If any officer authorized to serve process, shall wilfully and corruptly refuse to execute any lawful process to him directed, and requiring him to apprehend or confine any person charged with or convicted of an offence, or shall wilfully and corruptly omit or delay to execute such process, whereby such person shall escape and go at large, he shall be punished on conviction, by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred, nor less than fifty dollars.

SEC. 16. If any person, being required in the name of the United States, or of the Territory of Oregon, by any marshal or deputy marshal, sheriff, or deputy sheriff, coroner or constable, shall neglect or refuse to assist them in the execution of their office, in any criminal case, or in the preservation of the peace, or the apprehending or securing of any person for a breach of the peace, or in any case of escape or rescue of persons arrested upon civil process, he shall, upon conviction, be punished by fine, not exceeding five hundred, nor less than twenty-five dollars.

SEC. 17. If any justice of the peace, upon view of any breach of the peace, or any other offence proper for his cognizance, shall require any person to apprehend and bring before him the offender, every person so required, who shall refuse or neglect to obey such justice, shall, on conviction, be punished in the same manner as is provided in the next preceding section, for refusing assistance to a sheriff; and no person to whom such justice shall be known or shall declare himself to be a justice of the peace, shall be permitted to plead any excuse, or pretence of ignorance of his office.

SEC. 18. If any person shall falsely assume to be a justice of the peace, sheriff, deputy sheriff, coroner or constable, and shall take on himself to act as such, and require any person to aid or assist him in any matter pertaining to the duty of a justice of the peace, sheriff, deputy sheriff, coroner or constable, he shall on conviction, be punished by imprisonment in the county jail not more than one year, or by fine not exceeding two hundred, nor less than fifty dollars.

SEC. 19. Every person who shall in any manner disguise himself, with intent to obstruct the due execution of the law, or with intent to intimidate, hinder, or interrupt any officer, or any other person in the legal performance of his duty, or the exercise of his rights under the laws of the United States, or of this territory, whether such intent shall be effected or not, shall be punished, on conviction, by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred, nor less than fifty dollars.

SEC. 20. [illegible] having knowledge [illegible] commission of any [illegible] and [illegible] county, [illegible], [illegible] or any [illegible] therefor, upon an agreement or understanding express or implied, to compound or conceal such offence, or not to prosecute therefor, or not give evidence thereof, he shall, where such offence was punishable with death, upon conviction, be punished by imprisonment in the penitentiary, not more than two years, nor less than six months; and where the offence was punishable in any other manner, he shall be punished by imprisonment in the county jail not more than six, nor less than three months, or by fine not exceeding two hundred, nor less than fifty dollars.

Sec. 21. If any sheriff, constable or other officer, authorized to serve legal process, shall receive from a defendant, or any other person, any money or other valuable thing, as a consideration, reward, or inducement for delaying or omitting to arrest any defendant, or to carry him before a magistrate, or for delaying to take any person to prison, or for postponing the sale of any property under an execution, or for omitting or delaying to perform any duty pertaining to his office, he shall, on conviction, be punished by imprisonment in the county jail not more than one year, nor less than three months, or by fine not exceeding five hundred, nor less than fifty dollars.

CHAPTER —.

Offences against the public peace.

Sec. 1. If any persons to the number of three or more, whether armed or not, shall be unlawfully, or riotously or tumultuously assembled in any city, town, or county, it shall be the duty of the mayor and each of the alderman and councilman of such city, and of every justice of the peace, living in such city or town, and of the sheriff of the county, and his deputies, and also of every constable, and coroner, living in such city or town, to go among the persons so assembled, or as near them as may be with safety, and in the name of the Territory of Oregon, to command all the persons so assembled, immediately and peaceably to disperse; and if the persons so assembled shall not thereupon immediately and peaceably disperse, it shall be the duty of each of the magistrates and officers to command the assistance of all persons there present, in seizing, arresting and securing in custody, the persons so unlawfully assembled, so that they may be proceeded with according to law.

Sec. 2. If any person present, being commanded by any of the magistrates or officers mentioned in the preceding section, to aid and assist in seizing and securing such rioters, or persons unlawfully assembled, or in suppressing such riot, or unlawful assembly, shall refuse or neglect to obey such command, he shall be deemed to be one of the rioters, or persons unlawfully assembled, and shall be liable to be prosecuted therefor, and punished accordingly.

Sec. 3. If any mayor, alderman, justice of the peace, sheriff, deputy sheriff, constable or coroner, having notice of such riotous or tumultuous and unlawful assembly as mentioned in this chapter, in the city, [illegible] is invested by this chapter, for suppressing such riotous or unlawful assembly, and for arresting and securing the offenders, he shall be deemed guilty of a misdemeanor, and be punished by a fine not exceeding five hundred dollars.

SEC. 4. If any persons who shall be so riotously and unlawfully assembled, and who shall have been commanded to disperse as before provided, shall refuse or neglect to disperse without unnecessary delay, any two of the officers or magistrates before mentioned, may require the aid of a sufficient number of persons, in arms or otherwise, as may be necessary, and shall proceed in such manner as in their judgment shall be deemed expedient forthwith to disperse and suppress such unlawful, riotous, or tumultous assembly, and seize and secure the persons composing the same, so that they may be proceeded with according to law.

SEC. 5. Whenever an armed force shall be called out, for the purpose of suppressing any tumult or riot, or dispersing any body of men, acting together by force, with intent to commit any felony, or to offer violence to persons or property, or with intent by force or violence to resist or oppose the execution of the laws of this territory, such armed force, when they shall arrive at the place of such unlawful, riotous or tumultuous assembly, shall obey such orders for suppressing the riot or tumult, and for dispersing and arresting all the persons who are committing any of the said offences, as they may have received from the Governor, or from any Judge of a court of record, or the sheriff of the county; and also such further orders as they there shall receive from any two of the magistrates or officers mentioned in the first section.

SEC. 6. If by reason of any of the efforts made by any of the said magistrates or officers, or by their direction to disperse such unlawful, riotous or tumultous assembly, or to seize and secure the persons composing the same, who have refused to disperse, though the number remaining may be less than twelve, any such person or other persons then present as spectators or otherwise, shall be killed or wounded, the said magistrates and officers, and all persons acting by their order, or under their direction, shall be held guiltless and fully justified in the law; and if any of the said magistrates or officers, or any person acting by their order or under their direction, shall be killed or wounded, all the persons so unlawfully, riotously, and tumultously assembled, shall be held answerable therefor.

SEC. 7. If any of the persons so unlawfully assembled, shall demolish, pull down or destroy, or begin to demolish, pull down or destroy any dwelling house, or any other building, or any ship, steamboat or vessel, or do any other unlawful act, he shall, on conviction, be punished by imprisonment in the penitentiary, not more than three years, or in the county jail, not exceeding one year, and by fine, not exceeding one thousand dollars.

CHAPTER —.

Offences against public policy.

SEC. 1. Every person who shall promote or set up any lottery for money, or shall dispose of any property of value, real or personal, by way of lottery; and every person who shall aid, either by printing or writing, or shall in any way be concerned in setting up, managing, or drawing any such lottery; or who shall in any house, shop or building, owned or occupied by him, or under his control, knowingly permit the setting up, managing or drawing of any such lottery, or the sale of any lottery tickets, or share of a ticket, or any other writing, certificate, bill, token, or any other device, purporting or intended to entitle the holder, bearer or any other person, to any prize or interest, or share of any prize to be drawn in a lottery, shall, for every such offence, upon conviction, be punished by imprisonment in the penitentiary not more than one year, nor less than six months, or by a fine not exceeding ten thousand, nor less than fifty dollars.

SEC. 2. Every person who shall sell, either for himself or for any other person, or shall offer for sale, or shall have in his possession, with intent to sell, or offer for sale, or to exchange or negotiate, or shall in any wise aid or assist in the selling, negotiating or disposing of a ticket, in any such lottery, or a share of a ticket, or any such writing, certificate, bill, token, or other device as is mentioned in the preceding section, shall, on conviction, be punished by fine not exceeding one thousand, nor less than fifty dollars.

SEC. 3. If any person shall, after being convicted of any offence mentioned in the preceding sections, commit the like offence a second time, he shall be punished by imprisonment in the penitentiary, not more than two years nor less than one year.

SEC. 4. Every person who shall advertise any lottery ticket, or any share in such ticket, for sale, either by himself or any other person, or who shall set up or exhibit any sign, symbol, or any emblematic, or other representation of a lottery, or of the drawing thereof, or any such writing, certificate, bill, token, or other device before mentioned, or where the same may be purchased or obtained, or shall in any way invite or entice any other person to purchase or receive the same, shall, on conviction, be punished by fine, not exceeding two hundred nor less than twenty-five dollars.

SEC. 5. Every person who shall make or sell, or shall have in his possession with intent to sell, exchange, or negotiate, or who shall by printing, writing, or otherwise, assist in making or selling, or in attempting to sell, exchange, negotiate any false or fictitious lottery ticket, or any share thereof, or any writing, certificate, bill, token, or other device before mentioned, or any ticket, or share thereof, in any fictitious or pretended lottery, knowing the same to be false, or fictitious, or who shall receive any money, or other thing of value, for any such ticket or share of a ticket, or for any such writing, certificate, bill, token, or other device, purporting that the owner, bearer, or holder thereof, shall be entitled to receive any prize, or any thing of value, that may be drawn in any lottery, knowing the same to be false or fictitious, shall, for every such offence, on conviction, be punished by imprisonment in the penitentiary, not exceeding two years nor less than six months.

SEC. 6. Upon a trial of an indictment for either of the offences mentioned in the preceding section, any ticket, or share of a ticket, or any other writing or thing before mentioned, which the defendant shall have sold, or offered for sale, or for which he shall have received any valuable consideration, shall be deemed to be false, spurious, or fictitious, unless such defendant shall prove the same to be true and genuine, and to have been duly issued by the authority of some legislature, within the United States, and that such lottery was existing and undrawn, and such ticket, or share thereof, or other writing or thing before mentioned, was issued by lawful authority and binding upon the person who issued the same.

Sec. 7. All sums of money, and every other valuable thing drawn as a prize, or share of a prize in any lottery, by any person being an inhabitant or resident within this territory, and all sums of money, and other things of value received by such person, by reason of his being the owner or holder of any ticket, or share of a ticket, in any lottery, or pretended lottery, contrary to the provisions of this chapter, shall be forfeited to the use of the territory, and may be recovered by an information to be filed, or by a civil action, to be brought by the district attorney, in the name and on the behalf of said territory.

CHAPTER —.

Gaming.

Sec. 1. All E. O. or rolette tables, faro or faro banks, and all gaming with cards, gaming tables or gambling devices whatever, are hereby prohibited from being set up or used for gaming or gambling purposes in this territory.

Sec. 2. Every person who shall deal cards at the game called faro, pharo or forty-eight, whether the same shall be dealt with fifty-two, or any other number of cards, and every person who shall keep to be used in gaming, any gambling device whatever, designed to be used in gaming, shall forfeit the same on conviction, and be punished by fine not more than one hundred nor less than fifty dollars.

Sec. 3. Every person who shall bet any money or other property, at or on any gaming table, bank, or gambling device, prohibited by this chapter, shall on conviction be punished by fine not exceeding twenty, not less than five dollars.

Sec. 4. Every person who shall suffer any gaming table, bank, or gambling device prohibited by this chapter, to be set up, or used for the purpose of gaming, in any house, building, steamboat, raft, keel boat or boom, lot, yard, or garden, to him belonging, or by him occupied, or of which he has the control, shall be liable to punishment by fine, not exceeding one hundred, nor less than fifty dollars.

Sec. 5. No person shall be incapacitated or excused from testifying, touching any offence committed by another against any of the provisions of this chapter, relating to gaming, by reason of his having bet or played at the prohibited games or gaming devices; but the testimony which may be given by such person, shall in no case be used against such witness.

Sec. 6. All fines and forfeitures mentioned in this chapter, may be recovered before a justice of the peace, in the name and for the use of the county, where such offence may have been committed.

Sec. 7. It shall be the duty of the district attorney, upon notice of the commencement of a suit under any of the provisions of this chapter, to immediately prosecute the same, in the name and for the use of the county in which the offence is committed.

SEC. 8. If any person shall, by playing at cards, dice or other game, or by betting on the hands or sides of such as are gaming, lose to any person so playing or betting, any sum of money or any goods whatever, and shall pay or deliver the same, or any part thereof to the winner, the person so losing may sue for and recover such money by a civil action, before any court having competent jurisdiction.

SEC. 9. In any suit to be brought as provided in the preceding section, by the person so losing any such money or goods against the person winning the same, when it shall appear from the complaint that the said money or goods came to the hands of the defendant by gaming, if the plaintiff, when required by the court, before whom the cause is tried, shall make oath that the said money or goods were lost by gaming with the defendant, as alleged in the complaint, judgment shall be rendered that the plaintiff recover damages to the amount of the said money or goods, unless the defendant will make oath that he did not obtain the same, or any part thereof by gaming; and if he shall so discharge himself on oath, he shall recover of the plaintiff his costs, unless the plaintiff shall sustain his case by other testimony, according to the usual course of proceeding in civil actions.

SEC. 10. All notes, bills, bonds, mortgages or other securities or conveyances whatever, in which the whole or any part of the consideration shall be for any money or goods won by playing or gaming at cards, dice or any other game whatever, or by betting on the sides or hands of any persons gaming, or for reimbursing or repaying any money knowingly lent or advanced at the time and place of such gaming or betting, or lent and advanced for any gaming or betting to any person so gaming or betting, shall be void and of no effect, as between the parties to the same, and as to all persons, except such as shall hold or claim under them in good faith, and without notice of the illegality of the consideration of such contract or conveyance.

CHAPTER —.

Offences against Chastity, Morality and Decency.

SEC. 1. Every person who shall commit the crime of adultery, shall be punished, on conviction, by imprisonment in the penitentiary, not more than two years nor less than six months, or by fine not exceeding one thousand nor less than one hundred dollars; and when the crime is committed between a married woman and a man who is unmarried, the man shall be deemed guilty of adultery, and be liable to the same punishment; but no prosecution for adultery shall be commenced, except on the complaint of the husband or the wife, and no such prosecution shall be commenced after one year from the time of committing the offence.

SEC. 2. If any person, who has a former husband or wife living, shall marry another person, or shall continue to cohabit with such second husband or wife, he or she shall, except in cases mentioned in the third section, be deemed guilty of the crime of polygamy, and shall be punished, on conviction, by imprisonment in the penitentiary, not more than four years nor less than one year, or by fine not exceeding one thousand nor less than five hundred dollars.

Sec. 3. The provisions of the preceding section shall not extend to any person whose husband or wife shall have been continually remaining beyond sea, or shall have voluntarily withdrawn from the other, and remained absent for the space of seven years together, the party marrying again not knowing the other to be living within that time; nor to any person who has been legally divorced from the bonds of matrimony.

Sec. 4. If any man and woman, not being married to each other, shall lewdly and lasciviously cohabit and associate together, or if any man or woman, married or unmarried, shall be guilty of open and gross lewdness and lascivious behavior, every such person shall, on conviction, be punished by fine not exceeding three hundred, nor less than fifty dollars, or by imprisonment in the county jail, not exceeding three months.

Sec. 5. If any man shall commit fornication with any single woman, each of them shall, on conviction, be punished by imprisonment in the county-jail not more than thirty, nor less than ten days, or by fine not exceeding fifty, nor less than ten dollars.

Sec. 6. Any unmarried man who, under promise of marriage, or any married man who shall seduce and have illicit connexion with any unmarried female of previous chaste character, upon conviction, shall be punished by imprisonment in the penitentiary not more than five years, nor less than one year, or by imprisonment in the county jail not more than one year, nor less than six months, or by fine not exceeding one thousand, nor less than five hundred dollars; but no conviction shall be had under the provisions of this section, on the testimony of the female seduced, unsupported by other evidence, nor unless indictment shall be found within two years after the commission of the offence; *provided*, that the subsequent intermarriage of the parties may be pleaded in bar of a conviction.

Sec. 7. If any woman shall conceal the death of any issue of her body, which if born alive would be a bastard so that it may not be known whether such issue was born alive or not, or whether it was not murdered, she shall, on conviction, be punished by imprisonment in the penitentiary not more than one year, nor less than six months, or by fine not exceeding three hundred, nor less than one hundred dollars.

Sec. 8. Any woman who shall be indicted for the murder of her infant bastard child, may also be charged in the same indictment with the offence described in the last preceding section; and if on the trial, the jury shall acquit her of the charge of murder, and find her guilty of the other offence, judgment and sentence may be awarded against her for the same.

Sec. 9. Every person who shall keep a house of ill-fame, resorted to for the purpose of prostitution or lewdness, on conviction, shall be punished by imprisonment in the county jail not more than one year, nor less than six months, or by fine not exceeding five hundred nor less than one hundred dollars.

Sec. 10. Whenever the lessee of any dwelling house shall be convicted of the offence mentioned in the next preceding section, the lease or contract for letting such house, shall, at the option of the lessor, become void; and such lessor shall thereupon have the like remedy to recover the possession, as against a tenant for holding over after the expiration of his term.

SEC. 11. If any person shall import, print, publish, sell or distribute any book, or any pamphlet, ballad, printed paper or other thing containing obscene language or obscene prints, pictures, figures, or other descriptions, manifestly tending to the corruption of the morals of youth, or shall introduce into any family, school, or place of education, or shall buy, procure, receive, or have in his possession any such book, pamphlet, ballad, printed paper or other thing, either for the purpose of loan, sale, exhibition or circulation, or with intent to introduce the same into any family, school, or place of education, he shall, on conviction, be punished by imprisonment in the county jail not more than six, nor less than three months, or by a fine not more than three hundred, nor less than fifty dollars.

SEC. 12. All persons being within the degree of consanguinity, within which marriages are prohibited, or declared by law to be incestuous and void, who shall intermarry with each other, or who shall commit adultery, or fornication with each other, shall be punished, on conviction, by imprisonment in the penitentiary not more than two years, nor less than six months.

SEC. 13. Every person who shall commit sodomy, or the crime against nature, either with mankind, or any beast, shall, on conviction, be punished by imprisonment in the penitentiary not more than five years, nor less than one year.

SEC. 14. If any person not being lawfully authorized, shall wilfully dig up, disinter, remove or convey away any human body, or the remains thereof, or shall knowingly aid in such disinterment, removal or conveying away, every such offender and every accessory thereto, either before or after the fact, shall, on conviction, be punished by imprisonment in the penitentiary not more than two years, nor less than six months, or by fine not exceeding one thousand, nor less than fifty dollars.

SEC. 15. If any person shall wilfully, or with evil intent, destroy, mutilate, deface or remove any tomb, monument, grave-stone or other structure, or thing placed, or designed for a memorial of the dead, or any fence, railing, curb, or other thing intended for the protection or for the ornament of any tomb, monument, grave-stone or other structure before mentioned, or of any inclosure for the burial of the dead, or shall wilfully and with evil intent, destroy, mutilate, remove, cut, break or injure any tree, shrub, or plant, placed or being within any such inclosure, the person so offending shall, on conviction, be punished by a fine not exceeding one thousand, nor less than twenty-five dollars.

SEC. 16. If any person shall open or make any highway or townway, or shall construct any railroad, turnpike, canal, or any other thing in the nature of a public easement, over, in, through, or upon such part of any inclosure, being the property of a town, village, or religious society, or of private proprietors, as may be used for the burial of the dead, unless an authority for that purpose shall have been specially granted by law, or unless the consent of such town, village, religious society, or private proprietors respectively, shall have first been obtained, he shall be liable to punishment by imprisonment in the county jail not more than one year, nor less than six months, or by fine not more than five hundred, nor less than one hundred dollars.

Sec. 17. Every person who shall cruelly beat or torture any horse, ox or other animal, whether belonging to himself or another, shall be liable to punishment by imprisonment in the county jail, not more than thirty, nor less than ten days, or by fine not exceeding fifty, nor less than five dollars.

Sec. 18. Every person who on the Lord's day, or at any other time, shall wilfully interrupt or disturb any assembly of people, met for the worship of God, within the place of such meeting, or out of it, shall be liable to fine not exceeding fifty, nor less than five dollars, or by imprisonment in the county jail not exceeding thirty days.

Sec. 19. No person shall keep open his shop, [illegible]re or work-house, or shall do any manner of labor, except works of necessity and charity, be present at any dancing, or any public diversion, show or entertainment, or take any part in any sport game or play on the Lord's day, commonly called Sunday; and every one so offending shall be liable to punishment by a fine not exceeding five, nor less than two dollars for each offence.

Sec. 20. No person who conscientiously believes that the seventh day of the week ought to be observed as the Sabbath or Lord's day, and actually refrains from secular business and labor on that day, shall be liable to the penalties of the foregoing section.

Sec. 21. No person shall serve or execute any civil process from the midnight preceding to the midnight following the Lord's day, but such service shall be void, and the person serving or executing such process shall be liable in damages to the party aggrieved, in like manner as if he had not had any such process.

Sec. 22. Justices of the peace shall have jurisdiction of the offences mentioned in the fifth, seventeenth, eighteenth and nineteenth sections of this chapter.

CHAPTER —.

Offences against the Public Health.

Sec. 1. If any person shall, knowingly, sell any kind of diseased, corrupted, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, he shall be punished, on conviction, by imprisonment in the county jail, not more than one year, nor less than three months, or by fine, not exceeding five hundred, nor less than ten dollars.

Sec. 2. If any person shall fraudulently adulterate, for the purpose of sale, any substance intended for food, or any wine, spirits, malt liquors, or other liquor intended for drinking, with any substance injurious to health, he shall, on conviction, be punished by imprisonment in the county jail not more than one year, nor less than three months, or by fine not exceeding one thousand, nor less than fifty dollars, and the articles so adulterated shall be forfeited and destroyed.

Sec. 3. If any person shall fraudulently adulterate, for the purpose of sale, any drug or medicine, or knowingly offer any adulterated drug or medicine for sale, in such a manner as to render the same injurious to health, he shall, on conviction, be punished by imprisonment in the county jail not more than one year, nor less than three months, or by fine not exceeding five hundred, nor less than fifty dollars, and such adulterated drugs and medicines shall be forfeited and destroyed.

SEC. 4. If any person shall inoculate himself, or any other person, or shall suffer himself to be inoculated with the small pox, within this territory, with intent to cause the prevalence, or spread of this infectious disease, he shall, on conviction, be punished by imprisonment in the penitentiary, not more than three years, nor less than one year.

SEC. 5. Every apothecary, druggist, or other person, who shall sell and deliver any arsenic, corrosive sublimate, prussic acid, or any other active poison, without having the word "poison," and the true name thereof, in English, written or printed upon a label attached to the vial, box or parcel containing the same, shall, on conviction, be punished by a fine not exceeding one hundred, nor less than ten dollars.

CHAPTER —.

General provisions concerning crimes and punishments.

SEC. 1. Every person who shall be aiding in the commission of any offence, which shall be a felony, or who shall be accessory thereto before the fact, by counselling, hiring or otherwise procuring such felony to be committed, shall, on conviction, be punished in the same manner as is or shall be prescribed for the punishment of the principal felon.

SEC. 2. Every person who shall counsel, hire, or otherwise procure any offence to be committed, which shall be a felony, may be indicted and convicted as an accessory before the fact, either with the principal felon, or after the conviction of the same.

SEC. 3. Any person guilty of the offence in the preceding sections may be indicted, tried and punished in the same court, and in the same county where the principal felon might be indicted and tried, although the offence of counselling, hiring, abetting, or procuring the commission of such felony, may have been committed either within or without the limits of this territory.

SEC. 4. Every person not standing in the relation of husband or wife, parent or grand parent, child or grandchild, brother or sister, by consanguinity or affinity to the offender, who, after the commission of any felony, shall harbor, conceal, maintain, or assist any principal felon or accessory before the fact, or shall give such offender any other aid, knowing that he has committed a felony, or has been accessory thereto before the fact, with intent that he shall avoid and escape from detection, arrest, trial or punishment, shall be deemed an accessory after the fact, and on conviction, shall be imprisoned in the county jail not more than one year, or by fine not exceeding two hundred dollars.

SEC. 5. Every accessory either before or after the fact to any felony, by any statute made, or which shall hereafter be made, may be indicted, convicted and punished, whether the principal felon shall or shall not have been convicted previously, and either in the county where such person shall have become an accessory, or in the county where such principal felony shall have been committed.

Sec. 6. Offences committed on the boundary lines of two counties, or within one hundred rods of the dividing line between them, may be alleged in the indictment, to have been committed in either of them, and may be prosecuted and punished in either county.

Sec. 7. If any mortal wound shall be given, or other violence or injury shall be inflicted or any poison shall be admistered in one county, by means whereof death shall ensue in another county, the offence may be prosecuted in either county.

Sec. 8. If any such mortal wound shall be inflicted, or other violence or injury done, or poison administered, either within or without the limits of this territory, by means whereof death shall ensue in any county thereof, such offence may be prosecuted and punished in the county where such death may happen.

Sec. 9. In the prosecution of any offence committed upon, or in relation to, or in any way affecting any real estate, or any offence committed in stealing, embezzling, destroying, injuring or fraudulently receiving or concealing any money, goods or other personal estate, it shall be sufficient, and shall not be deemed a variance, if it be proven on trial that at the time when such offence was committed, either the actual or constructive possesion, or the general or special property in the whole, or any part of such real or personal estate was in the person or community alleged in the indictment, or other accusation, to be the owner thereof.

Sec. 10. When any fine shall have been imposed upon any person, upon conviction upon an indictment or presentment of a grand jury, or where such fine shall have been imposed by a justice of the peace, such fine, when the same shall be collected, shall in all cases be paid into the county treasury of the county where the conviction was had, and shall be appropriated for schools in the same manner as the yearly school fund collected in such county.

Sec. 11- The plea of benefit of clergy, wager of battle, and the distinction between murder and petit treason, are abolished, and the last named offence shall be prosecuted and punished as murder in the second degree.

CHAPTER —.

Search warrants, and proceedings thereon.

Sec. 1. When complaint shall have been made on oath to any magistrate authorized to issue warrants in criminal cases, that personal property has been stolen or embezzled or obtained by false tokens or pretences, and that the complainant believes that it is concealed in any particular house or place, the magistrate, if he be satisfied that there is reasonable cause for such belief, shall issue his warrant to search for such property.

Sec. 2. Any such magistrate, when satisfied that there is reasonable cause, may also upon like complaint made on oath, issue search warrants in the following cases, to wit:

1. To search for and seize any counterfeit or spurious coin, forged bank notes, and other forged instruments or tools, machines, or materials prepared or provided for making either of them.

2. To search for and seize any books, pamphlets, ballads, printed papers, or other things containing obscene language, or obscene prints, pictures, figures or descriptions, manifestly tending to corrupt the morals of youth, and intended to be sold, loaned, circulated, distributed, or introduced into any family, school, or place of education.

3. To search for and seize any gaming apparatus or implements used or kept, and to be used in unlawful gaming in any gaming house or in any building, apartment or place resorted to for the purpose of unlawful gaming.

SEC. 3. All such warrants shall be directed to the sheriff of the county, or his deputy, or to any constable of the county, commanding such officer to search the house or place where the stolen property, or other things for which he is required to search, are believed to be concealed, which place and property or things to be searched for, shall be designated and described in the warrant, and to bring such stolen property or other things, when found, and the person in whose possession the same shall be found, before the magistrate who issued the warrant, or before some other magistrate, or court having cognizance of the case.

SEC. 4. When any officer in the execution of a search warrant, shall find any stolen or embezzled property, or shall seize any other things for which a search is allowed by this chapter, all the property and things so seized shall be safely kept by the direction of the court or magistrate, so long as shall be necessary for the purpose of being produced in evidence on any trial, and as soon as may be afterwards, all such stolen and embezzled property shall be restored to the owner thereof, and all other things seized by virtue of such warrant, shall be destroyed under direction of the court or magistrate.

CHAPTER —.

Demanding fugitives from justice.

SEC. 1. The Governor of this territory may, in any case authorized by the constitution and laws of the United States, appoint agents to demand of the executive authority of any state or territory, any fugitive from justice, or any person charged with felony, or any other crime in this territory, and whenever an application shall be made to the Governor for that purpose, the district attorney, or any other prosecuting officer of the territory, when required by the Governor, shall forthwith investigate the grounds of such application, and report to the Governor all material circumstances which may come to his knowledge, with an abstract of the evidence, and his opinion as to the expediency of the demand; but the Governor may in any case appoint such agents without requiring the opinion of, or any report from the district attorney; and the accounts of the agents appointed for such purpose, shall, in all cases be audited by the Governor, and paid from the territorial treasury.

SEC. 2. When a demand shall be made upon the Governor of this [illegible] executive of any state or territory, in any case authoriz ized by the constitution and laws of the United States, for the delivery over of any person charged in such state or territory with treason, felony or any other crime, the district attorney, or any other prosecuting officer, when required by the Governor, shall forthwith investigate the ground of such demand and report to the Governor all material facts which may come to his knowledge as to the situation and circumstances of the person so demanded, especially as to whether he is held in custody, or is under recognizance to answer for any offence against the laws of this territory, or of the United States, or by force of any civil process, and also whether such demand is made according to law, so that such person ought to be delivered up; and if the Governor is satisfied that such demand is conformable to law, and ought to be complied with, he shall issue his warrant, under the seal of the territory, authorizing the agents who make such demand, either forthwith, or at such time as shall be designated by the warrant, to take and transport such person to the line of the territory, at the expense of such agents, and shall also by such warrant require the civil officers within this territory, to afford all needful assistance in the execution thereof.

SEC. 3. Whenever any person shall be found within this territory, charged with any offence committed in any state or territory, and liable by the constitution and laws of the United States, to be delivered over on the demand of the executive of such state or territory, any court or magistrate authorized to issue warrants in criminal cases, may, upon complaint under oath, setting forth the offence, and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the same or some other court, or magistrate within the territory to answer such complaint, as in other cases.

SEC. 4. If upon examination of the person charged, it shall appear to the court or magistrate that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the Governor, he shall, if not charged with a capital crime, be required to recognize, with sufficient securities, in a reasonable sum, to appear before such court, or magistrate, at a future day, allowing a reasonable time to obtain the warrant of the executive, and to abide the order of the court or magistrate, and if such person shall not so recognize, he shall be committed to prison, and be there detained until such day, in like manner as if the offence charged had been committed within this territory; and if the person so recognizing shall fail to appear according to the condition of his recognizance, he shall be defaulted, and the like proceedings shall be had as in the case of other recognizances entered into before such court, or magistrate; but if such person be charged with a capital crime, he shall be committed to prison, and there detained until the day so appointed for his appearance before the court or magistrate.

SEC. 5. If the person so recognized or committed shall appear before the court or magistrate upon the day ordered, he shall be discharged, unless he be demanded by some person authorized by the warrant of the executive to receive him, or unless the court or magistrate shall see cause to commit him, or require of him to recognize anew for his appearance at some other day; and if when ordered he shall not so recognize, he shall be committed and detained as before provided; whether the person so appearing shall be recognized, committed or discharged, any person authorized by the warrant of the executive, may at all times take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

SEC. 6. The complainant in such cases, shall be answerable for the actual costs and charges, and for the support in prison of any person so committed, and shall advance to the jailor one week's board at the time of commitment, and so from week to week so long as such person shall remain in jail; and if he fail to do so, the jailor may forthwith discharge such person from his custody.

CHAPTER —.

Of proceedings to prevent the commission of crimes.

SEC. 1. The judges of the several courts of record, in vacation as well as in open court, and all justices of the peace shall have power to cause all laws made for the preservation of the public peace, to be kept, and in the execution of that power, may require persons to give security to keep the peace, or for their good behavior, or both, in the manner provided in this chapter.

SEC. 2. Whenever complaint shall be made to any such magistrate, that any person has threatened to commit an offence against the person or property of another, the magistrate shall examine the complainant, and any witness who may be produced on oath, and reduce such complaint to writing, and cause the same to be subscribed by the complainant.

SEC. 3. If upon examination it shall appear that there is just cause to fear that such offence may be committed, the magistrate shall issue a warrant under his hand, reciting the substance of the complaint, and requiring the officer to whom it may be directed, forthwith to apprehend the person complained of, and bring him before such magistrate, or some other magistrate or court having jurisdiction of the cause.

SEC. 4. The magistrate before whom any person is brought upon charge of having made threats as aforesaid, shall, as soon as may be, examine the complainant, and the witnesses to support the prosecution, on oath, in the presence of the party charged, in relation to any matters connected with such charge, which may be deemed pertinent.

SEC. 5. After the testimony to support the prosecution, the witnesses for the prisoner, if he have any, shall be sworn and examined, and he may be assisted by counsel in such examination, and also in the cross examination of the witnesses in support of the prosecution.

SEC. 6. If upon examination it shall appear that there is just cause to fear that any such offence will be committed by the party complained of, he shall be required to enter into recognizance with sufficient sureties, in such sum as the magistrate shall direct, to keep the peace towards all the people of this territory, and especially towards the person requiring such security, for such term as the magistrate shall order, not exceeding six months; but he shall not be ordered to recognize for his appearance at the district court, unless he is charged with some offence for which he ought to be held to answer at said court.

Sec. 7. If the person so ordered to recognize, shall refuse or neglect to comply with such order, the magistrate shall commit him to the county jail during the period for which he was required to give security, or until he shall so recognize, stating in the warrant the cause of commitment, with the sum and time for which security was required.

Sec. 8. If upon examination, it shall not appear that there is just cause to fear that any such offence will be committed by the party complained of, he shall be forthwith discharged, and if the magistrate shall deem the complaint unfounded, frivolous or malicious, he shall order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the magistrate, and the officer for their fees, as for his own debt.

Sec. 9. When no order respecting the costs is made by the magistrate, they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give security for the peace, or for his good behavior, the magistrate may further order the costs of prosecution, or any part thereof, to be paid by such person, who shall stand committed until such costs are paid, or he is otherwise legally discharged.

Sec. 10. Any person aggrieved by the order of any justice of the peace, requiring him to recognize as aforesaid, may, within ten days after the decision of the justice, on giving the security required, appeal to the district court, next to be holden in the same county, or that county to which said county is attached for judicial purposes.

Sec. 11. The magistrate from whose order an appeal is so taken, shall require such witnesses as he may deem necessary to support the complaint, to recognize for their appearance at the court to which appeal is made.

Sec. 12. The court before which such appeal is prosecuted, may affirm the order of the justice, or discharge the appellant, or may require the appellant to enter into a new recognizance with sufficient sureties, in such sum and for such time as the court shall think proper, and may also make such order in relation to the costs of prosecution, as it may deem just and reasonable.

Sec. 13. If any party appealing shall fail to prosecute his appeal, his recognizance, shall remain in full force and effect, as to any breach of the condition, without an affirmation of the judgment or order of the magistrate, and shall also stand as security for any costs which shall be ordered by the court appealed to, to be paid by the appellant.

Sec. 14. Any person committed for not finding sureties, or refusing to recognize as required by the court or magistrate, may be discharged by any judge or justice of the peace, on giving such security as was required.

Sec. 15. Every recognizance taken in pursuance of the foregoing provisions, shall be transmitted by the magistrate to the district court for the county, on or before the first day of the next term, and shall be there filed of record by the clerk.

Sec. 16. Any person who shall, in the presence of any magistrate *mentioned in the first section of this chapter*, or before any court of record make an affray, or threaten to kill, or beat another, or to commit any violence or outrage against his person or property, and every person who, in the presence of such court or magistrate, shall contend with hot and angry words, to the disturbance of the peace, may be ordered without process or any other proof, to recognize for keeping the peace, and being of good behavior for a term not exceeding six months, and in case of a refusal, may be committed as before directed.

SEC. 17. If any person shall go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury or violence to his person, or to his family or property, he may, on complaint of any other person, having reasonable cause to fear an injury, or breach of the peace, be required to find sureties for keeping the peace for a term not exceeding six months, with the right of appealing as before provided.

SEC. 18. Whenever on a suit brought on any such recognizance, the penalty thereof shall be adjudged forfeited, the court may remit such portion of the penalty on the petition of any defendant, as the circumstances of the case shall render just and reasonable.

SEC. 19. Any surety in a recognizance to keep the peace, or for good behavior, or both, shall have the same authority and right to take and surrender his principal, as if he had been bail for him in a civil case, and upon such surrender, shall be discharged and exempted from all liability for any act of the principal, subsequent to such surrender, which would be a breach of the condition of the recognizance; and the person so surrendered may recognize anew, with sufficient sureties, before any justice of the peace for the residue of the term, and thereupon shall be discharged.

CHAPTER —.

Arrests.

SEC. 1. Arrest is the taking a person into custody, that he may be held to answer for a public offence.

SEC. 2. An arrest may be either, by a peace officer under a warrant, or without a warrant, or by a private person.

SEC. 3. Every person shall aid an officer in the execution of a warrant, if the officer require his aid, and be present and acting in its execution.

SEC. 4. If the offence charged be a felony, the arrest may be made on any day, and at any time of the day or night; if it be a misdemeanor, the arrest shall not be made on sunday, or at night, unless upon the direction of the magistrate, indorsed upon the warrant.

SEC. 5. An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officer.

SEC. 6. In case the party, against whom the warrant is issued, shall escape from the county in which the crime was committed, any officer, to whom the warrant is directed, may pursue and arrest him in any county in the territory.

SEC. 7. A peace officer, or a private person may, without a warrant, arrest a person,

1. For a public offence, committed or attempted in his presence;
2. When the person arrested has committed a felony, though not in his presence;

3. When a felony has in fact been committed and he has reasonable cause for believeing, that the person arrested committed it.

SEC. 8. He shall before making the arrest, inform the person to be arrested, of the cause thereof, and require him to submit, except, when he is in the actual commission of the offence, or when he is arrested on pursuit immediately after its commission.

SEC. 9. If a person arrested escape or be rescued, the person from whose custody he escaped, or was rescued, may immediately pursue and retake him, at any time, and in any place, in the territory.

CHAPTER —.

Examination of offenders, commitment for trial, and taking bail.

SEC. 1. For the apprehension of persons charged with offences, the judges of the district courts, in vacation as well as in term-time, and all justices of the peace are authorized to issue process to carry into effect the provisions of this chapter.

SEC. 2. Upon complaint being made to any such magistrate, that a criminal offence has been committed, he shall examine on oath the complainant, and any witness provided by him, and shall reduce the complaint to writing, and shall cause the same to be subscribed by the complainant; and if it shall appear that any such offence has been committed, the court or justice shall issue a warrant reciting the substance of the accusation, and requiring the officer to whom it shall be directed, forthwith to take the person accused and bring him before the said court or justice, or before some other court or magistrate of the county, to be dealt with according to law; and in the same warrant, may require the officer to summon such witnesses as shall be therein named, to appear and give evidence on the examination.

SEC. 3. If any person against whom a warrant may be issued for an alleged offence committed in any county, shall, either before or after the issuing of such warrant, escape from, or be out of the county, the sheriff or other officer to whom such warrant may be directed, may pursue and apprehend the party charged, in any county in this territory, and for that purpose may command aid, and exercise the same authority as in his own county.

SEC. 4. When a magistrate admits a prisoner to bail, or commits him, he shall also bind by recognizances such witnesses against the prisoner as he shall deem material, to appear and testify at the next court having cognizance of the offence, and in which the prisoner shall be held to answer.

SEC. 5. If the magistrate shall be satisfied that there is good cause to believe that any such witness will not perform the condition of his recognizance, unless other security be given, such magistrate may order the witness to enter into a recognizance, with such sureties as may be deemed necessary, for his appearance at court.

SEC. 6. When any married woman, or minor is a material witness, any other person may be allowed to recognize for the appearance of such witness, or the magistrate may, in his discretion, take the recognizance of such married woman or minor in a sum, not exceeding fifty dollars, which shall be valid and binding in law, notwithstanding the disability of coverture or minority.

SEC. 7. All witnesses, required to recognize either, with or without sureties, shall, if they refuse, be committed to prison by the magistrate, there to remain until they comply with such order, or be otherwise discharged according to law.

SEC. 8. Any judge of a court of record, on application of any prisoner, committed for a bailable offence, may inquire into the case, and admit such prisoner to bail; and any person, committed for not finding sufficient securities, may be admitted to bail, by either of said judges.

SEC. 9. Any magistrate to whom complaint is made, or before whom any prisoner is brought, may associate with himself, one or more magistrates of the same county, and they may together execute the powers and duties before mentioned, but no fees shall be taxed for such associates.

SEC. 10. The testimony of the witnesses examined shall be reduced to writing by the magistrate, or under his discretion, when he shall think it necessary, and shall be signed by the witness, if required by the magistrate.

SEC. 11 All examinations, and recognizances taken by any magistrate in pursuance of the provisions of this chapter, shall be certified, and returned by him, to the district attorney, or the clerk of the court, before which the party charged is bound to appear, on or before the first day of the sitting thereof; and if such magistrate shall neglect or refuse to return the same, he may be compelled forthwith by rule of court, and in case of disobedience, may be proceeded against by attachment, as for contempt.

SEC. 12. When any person shall be committed to prison, or shall be under recognizance to answer any charge for a misdemeanor, for which the party injured may have a remedy by a civil action, except when the offence was committed upon a sheriff or other officer of justice, or riotously, or with intent to commit a felony, if the party injured shall appear before the magistrate who made the commitment, or took the recognizance, and acknowledge in writing that he has received satisfaction for the injury, the magistrate may in his discretion, on payment of all costs which may have occurred, discharge the recognizance, or supercede the commitment by an order under his hand; and may also discharge all recognizances, and supercede the commitment of all witnesses in the case.

SEC. 13. Every such order of the magistrate, discharging the recognizance of the party, or witness, shall be filed in the office of the clerk before the sitting of the court before which they are bound to appear; and every order superceding the commitment of the party charged, or of any witnesses, shall be delivered to the keeper of the jail in which he is confined, who shall forthwith discharge him; and every such order, if so filed and delivered, and not otherwise, shall forever bar all remedy by civil action for such injury.

SEC. 14. When any person under recognizance in any criminal prosecution, either to appear and answer, or to prosecute an appeal or to testify in any court, shall fail to perform the condition of any such recognizance, his default shall be recorded, and process shall be issued against the persons bound by the recognizance, or such of them as the prosecuting officer shall direct.

Sec. 15. When any action is brought in the name of the territory, against a principal or surety in any recognizance entered into either by a party, or a witness in any criminal prosecution, and the penalty of such recognizance shall be adjudged forfeited, the court may, on application of any party defendant, remit any part or the whole of such penalty, and may render judgment thereon for the territory, according to the circumstances of the case, and the situation of the party, and upon such terms and conditions as to such court shall seem just and reasonable.

Sec. 16. No such action brought on a recognizance as mentioned in the preceding section, shall be barred or defeated, nor shall judgment be arrested thereon by reason of any neglect or omission to note or record the default of any principal or surety, at the term when such default shall happen, nor by reason of any such defect in the form of the recognizance, if it sufficiently appear from the tenor thereof, at what court the party or witness was bound to appear, and that the court or magistrate before whom it was taken, was authorized by law to require and take such recognizance.

Sec. 17. The magistrate, while examining any witness, may in his discretion exclude from the place of examination all the other witnesses; he may also if requested, or if he can see cause, direct the witnesses for or against the prisoner to be kept separate so that they cannot converse with each other until they shall have been examined.

Sec. 18. Persons charged with an offence punishable with death, shall not be admitted to bail when the proof is evident or the presumption great; but for all other offences bail may be taken in such sum as in the opinion of the magistrate will secure the appearance of the person charged with the offence, at the court where such person is to be tried.

CHAPTER —.

Of challenging Jurors.

Sec. 1. A person, held to answer a charge for a public offence, may challenge the panel of the grand jury, or an individual grand juror, before they retire, after being sworn and charged by the court.

Sec. 2. A challenge to the panel may be interposed for one or more, of the following causes only:—

1. That the requisite number of ballots was not drawn from the jury box of the county.

2. That the drawing was not had in the presence of the officer, or officers prescribed by law.

3. That the drawing was not had at least ten days before the court.

Sec. 3. A challenge, to an individual grand juror, may be interposed by a person actually in custody, or on bail, for one or more of the following reasons:—

1. On the ground of a want of any of the qualifications, proscribed by statute to render a person competent as a juror.

2. That a state of mind exists on his part in reference to the case, or to either party, which satisfies the court, in the exercise of a sound discretion, that he cannot act impartially, and without prejudice to the substantive rights of the party challenging.

SEC. 4. Challenges shall be entered upon the minutes, and decided by the court.

SEC. 5. If a challenge to the panel be allowed, the grand jury are prohibited from inquiring into the charges, against the defendant, by whom the challenge is made.

SEC. 6. If a challenge to an individual grand juror be allowed, he cannot be present at, or take any part in the consideration of the charge against the defendant, who interposed the challenge, or the deliberation of the grand jury thereon.

SEC. 7. The grand jury shall inform the court of a violation of the last section, and it shall be punished by the court as a contempt.

SEC. 8. The court shall appoint a foreman to the grand jury.

SEC. 9. The following oath shall be administered to the grand jury: "You, as grand jurors, for the body of the county of——— (as the case may be) do solemnly swear, [illegible] affirm,) that you will diligently inquire into, and true presentment make of all such matters and things as shall come to your knowledge, according to your charge; the counsel of the United States of America, of the district attorney, your own counsel, and that of your fellows, you shall keep secret; you shall present no person through envy, hatred or malice; neither will you leave any person unpresented through fear, favor, affection, or hope of reward; but that you will present things truly, as they come to your knowledge, according to the best of your understanding, and according to the laws of this territory. So help you, God.)

SEC. 10. If after the foreman is sworn, any grand juror appear, and be admitted as such, the oath, as prescribed in section nine, shall be administered to him commencing, "You as one of this grand jury" and so on to the end.

SEC. 11. The grand jury being empanneled and sworn, shall be charged by the court; in doing so, it shall give them such information as it may deem proper, as to the nature of their duties, and any charges for public offences returned to the court, or likely to come before the grand jury.

SEC. 12. The grand jury then shall retire to a private room and inquire into the offences cognizable by them.

SEC. 13. The grand jury shall appoint one of their number as clerk, who shall preserve the minutes of their proceedings, except of the votes of the individual members on a presentment or indictment, and of the evidence given before them.

SEC. 14. The grand jury have power, and it is their duty to inquire into all public offences committed, or triable in the county, and to present them to the court by indictment.

SEC. 15. An indictment is an accusation in writing, presented by a grand jury to a competent court, charging a person with a public offence.

SEC. 16. The foreman may administer an oath to any witness appearing before the grand jury.

SEC. 17. In the investigation of a charge for the purpose of indictment, the grand jury shall receive no other evidence, than

1. Such as is given by witnesses produced and sworn before them; or,

2. By legal documentary evidence.

SEC. 18. The grand jury shall receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay and secondary evidence.

SEC. 19. The grand jury are not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses.

SEC. 20. If a member of the grand jury know, or has reason to believe that a public offence has been committed, which is triable in the county, he shall declare the same to his fellow jurors, who shall thereupon investigate the same.

SEC. 21. The grand jury shall inquire

1. Into the condition of every person imprisoned on a criminal charge, triable in the county, and not indicted;

2. Into the condition and management of the public prisons in the county; and

3. Into the wilful and corrupt misconduct in office, of public officers of every description in the county.

SEC. 22. They shall be entitled to free access at all reasonable times to the public prisons, and to the examination without charge of all public records in the county.

SEC. 23. The grand jury may at all reasonable times ask the advice of the court, or of the district attorney; and whenever required by the grand jury, it shall be the duty of the district attorney to attend them for the purpose of framing indictments or of examining witnesses in their presence, but no district attorney, sheriff or other person, except the grand jurors, shall be permitted to be present during the expression of their opinions, or the giving their votes upon any matter before them.

SEC. 24. A member of the grrnd jury may be required by any court to disclose the testimony of any witness examined before the grand jury for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any other person, upon a charge against him for perjury, in giving his testimony, or upon his trial therefor.

SEC. 25. A grand juror shall not be questioned for any thing he may say, or any vote he may give in the grand jury, relative to a matter legally pending before the jury, except for a perjury, of which he may have been guilty in making an accusation, or giving testimony to his fellow jurors.

Finding and presentation of an indictment.

SEC. 26. An indictment shall not be found without the concurrence of at least twelve grand jurors; when so found, it shall be indorsed "a true bill," and the indorsement shall be signed by the foreman of the grand jury; when not so found, it shall be indorsed "not a true bill," and signed in like manner.

SEC. 27. The dismissal of the charge shall not, however, prevent it being again submitted to a grand jury, as often as the court may direct.

Sec. 28. When an indictment shall be found, the names of the witnesses examined before the grand jury shall in all cases be inserted at the foot of the indictment, or endorsed thereon, before it is presented to the court.

Sec. 29. When an indictment is found by the grand jury, it shall be immediately presented by their foreman, in their presence, to the court, and shall be filed with the clerk, and remain in his office as a public record.

CHAPTER —.

Of indictments.

Sec. 1. The first pleading on the part of the territory, shall be the indictment.

Sec. 2. The indictment shall contain,

1. The title of an action specifying the name of the court to which the indictment is presented, and the names of the parties.
2. A statement of the acts constituting the offence, in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended.

Sec. 3. It may be substantially in the following form:

No. 1.

The Territory of Oregon, vs. A——. B——.	"The district court for the county of ——, and Territory of Oregon.

A. B. is accused by the grand jury of the county of ——, by this indictment, of the crime of (here insert the name of the offence, if it have one, such as treason, murder, arson, or the like, or if it be a misdemeanor, having no general name, such as libel, assault and battery, or the like, insert a brief description of it, as it is given by law,) committed as follows:

The said A. B, on the —— day of ——, A. D. 18—, at the town, (city, or village, as the case may be,) of ——, in this county, (here set forth the act, charged as an offence, according to the form adapted to the case, as provided in the following forms, or similar ones:)

Dated at ——, in the county of ——, the —— day of ——, A. D., 18—.

(Signed,) S. H.,
Foreman of the Grand Jury.

No. 2.

In an indictment for murder in the first degree.

[Commencement the same as No. 1.]

—— "Purposely, feloniously, and of deliberate and premeditated malice, and without the authority of law, or in the perpetration or attempt to perpetrate, a rape, arson, robbery, or burglary, (as the case may be,) killed C. D, by shooting him with a gun or pistol, or by administering to him poison, or by pushing him into the water whereby he was drowned, or by throwing him from the roof of a building, or by means unknown to the grand jury, or as the case may be.

No. 3.

In an indictment for murder in the second degree.

——— Without the authority of law, purposely, feloniously, maliciously, but without deliberation and premeditation, or being engaged in the commission of some felony, (as the case may be,) other than a rape, arson, robbery, and burglary, without any desire to effect death, killed C. D, by shooting him with a gun, as the case may be.

No. 4.

Manslaughter.

——— Feloniously, unlawfully and voluntarily killed C. D, without malice, and without any mixture of deliberation, by stabbing him with a knife, or as the case may be.

No. 5.

——— Deliberately and feloniously assisted one C. D, in the commission of self-murder, which crime the said C D then and there committed, by hanging himself by the neck until he was dead, as the case may be.

No. 6.

——— Was the owner of a bull (or other mischievous animal, describing it) and knowing its propensities, wilfully and feloniously suffered such bull to run at large, (or kept it without ordinary care) and the said bull while so at large, (or not confined) killed one C. D, who took all the precaution which the circumstances would permit to avoid such bull, or:

No. 7.

In an indictment for rape.

——— Forcibly and feloniously ravished C. D, a woman of the age of ten years, or upwards: or

No. 8.

——— Unlawfully, carnally and feloniously knew and abused C. D, a female child under the age of ten years.

No. 9.

In an indictment for robbery.

——— Feloniously took a gold watch, (or any other property,) the property of C. D, from his person, and against his will, by violence to his person, (or by putting him in fear of some immediate injury to his person:) or

No. 10.

——— Feloniously took a gold watch, (or as the case may be,) the property of C. D, in his presence, and against his will by violence to his person.

No. 11.

In an indictment for arson.

——— Wilfully, maliciously and feloniously set fire to, (or burned,) in the night time, a dwelling house in which there was a human being at the time lawfully residing, namely, N. H, (or whose name is unknown to the grand jury,) or

No. 12.

——— Wilfully, maliciously and feloniously set fire to, (or burned,) the dwelling house of another in the day time: or

No. 13.

On an indictment for larceny.

——— Feloniously took and carried away one gold watch and one silver chain, the personal property of J. D, (or of a person whose name is unknown to the grand jury) of the value of more than thirty-five dollars: or

No. 14.

In an indictment for burglary.

——— Feloniously broke into and entered in the night time, the dwelling house of C. D, in which there was at the time a human being, namely, the said C. D, (or whose name is unknown to the grand jury,) with intent to commit murder, (a rape, robbery, or larceny, or other public offence, describing it generally,) therein, by forcibly bursting or breaking the wall or outer door or window of such house, (or as the case may be:) or

No. 15.

In an indictment for forgery and counterfeiting.

——— Feloniously forged or counterfeited, or falsely altered by erasing a material part thereof, (as the case may be) an instrument purporting to be (or being) the last will and testament of C. D, devising certain real and personal property, with intent to defraud: or

No. 16.

——— Feloniously forged a certificate purporting to have been issued by J. C, an officer duly authorized to make such certificate of the acknowledgement of C. D, of the execution by him of a conveyance to E. F, of certain real property in the town of ———, with intent to defraud the said C. D: or

No. 17.

——— Feloniously and falsely made an impression, purporting to be the impression of the great seal of the territory, on instrument in writing, being, (or purporting to be) a ——— (stating generally the purport of the instrument,) with the intent to defraud: or

No. 18.

——— Feloniously counterfeited a gold (or silver) coin of the Republic of Mexico, called a dollar, which was at that time current by custom or usage within this territory: or

No. 19.

——— Feloniously had in his possession a counterfeit of a gold (or silver) coin of the Republic of Mexico, called a dollar, which was at that time current in the territory, knowing the same to be counterfeited, with intent to defraud (or injure) by altering the same as true or false.

No. 20.

In an indictment for perjury.

——— On his examination as a witness duly sworn to testify the truth on the trial of a civil action in the court of——— between C. D, plaintiff, and E. F, defendant, which court had authority to administer such oath, he feloniously testified falsely, that (stating the facts to be alleged to be false,) the matters so testified being material, and the testimony being willfully, and corruptly false.

No. 21.

In an indictment for bigamy.

——— Having a wife then living, felonously and unlawfully married one G. A.

No. 22.

In an indictment for libel.

——— Felonously published in a newspaper called the , the following libel concerning C. D., (here insert the article charged as being a libel.)

SEC. 4. The manner of stating the act constituting the offence as set forth in the preceding forms is sufficient in all cases where the forms given are applicable. In all other cases forms may be used as nearly similar as the nature of the case may permit.

SEC. 5. The indictment shall be direct and certain as it regards

1. The party charged.
2. The offence charged.
3. The particular circumstances of the offence charged, when they are necessary to constitute a complete offence.

SEC 6. When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

SEC. 7. The indictment shall charge but one offence, and in one form only, except that where the offence may be committed by the use of different means, the indictment may allege the means in the alternative.

SEC. 8. The precise time at which the offence was committed need not be stated in the indictment, but may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the offence.

SEC. 9. When the offence involves the commission of an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material.

SEC. 10. The words used in an indictment shall be construed in their usual acceptions, in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

SEC. 11. Words used in the statutes to define a public offence need not be strictly pursued in the indictment, but other words conveying the same meaning may be used.

SEC. 12. The indictment is sufficient if it can be understood therefrom,

1. That it is entitled in a court having authority to receive it, though the name of the court is not accurately stated.
2. That it was found by a grand jury of the county in which the court was held
3. That the defendant is named, or, if his name cannot be discovered,

that he is described by a fictitious name, with the statement that he has refused to discover his real name.

4. That the offence was committed at some place within the jurisdiction of the court, except where as provided by law, the act, though done without the local jurisdiction of the county, is triable therein;

5. That the offence was committed at some time prior to the time of finding the indictment;

6. That the act or omission charged as the offence, is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended;

7. That the act or omission charged as the offence, is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction, according to the right of the case.

SEC. 13. No indictment shall be deemed insufficient, nor shall the the trial, judgment or other proceedings thereon be affected by reason of a defect or imperfection in matter of form, which does not tend to the prejudice of the substantial rights of the defendant upon the merits.

SEC. 14. Neither presumptions of law nor matter of which judicial notice is taken, need be stated in an indictment.

SEC. 15. In pleading a judgment or other determination of, or proceeding before a court or officer of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but the judgment or determination may be stated to have been duly given or made. The facts constituting jurisdiction, however, shall be established on trial.

SEC. 16. In pleading a private statute or a right derived therefrom, it shall be sufficient to refer to the statute by its title, and the day of its passage, and the court thereupon shall take special notice thereof.

SEC. 17. An indictment for libel need not set forth any extirnsic facts for the purpose of showing the application to the party libeled, of the defamatory matter on which the indictment is founded, but it is sufficient to state generally that the same was published concerning him; and the fact that it was so published shall be established on the trial.

SEC. 18. When an instrument which is the subject of an indictment for forgery has been destroyed or withdrawn by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment and established on the trial, the misdescription of the instrument is immaterial.

SEC. 19. In an indictment for perjury or subornation of perjury, it shall be sufficient to set forth the substance of the controversy or matter in respect to which the offence was committed, and in what court, or before whom the oath alleged to be false was taken, and that the court or person before whom it was taken, had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record or proceedings with which the oath is connected, nor the commission or authority of the court or person, before whom the perjury was committed.

SEC. 20. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

SEC. 21. The distinction between an accessory before the fact and a principal, and between the principals in the first and second degree in cases of felony, is abrogated; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offence, or aid and abet in the commission, though not present, shall hereafter be indicted, tried and punished as principals in the case of a misdemeanor.

SEC. 22. A person may be indicted for having, with the knowledge of the commission of a public offence, taken money or property of another, or a gratuity, or reward, or an engagement or promise therefor, upon an agreement or understanding, express or implied to compound or conceal the offence, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offence has not been indicted or tried.

CHAPTER —.

Arraignment of the defendant.

SEC. 1. When the indictment is filed, the defendant shall be arraigned thereon before the court in which it is found, if it be triable therein, or if not, before the court to which it is sent or removed.

SEC. 2. If the indictment be for a felony, the defendant shall be personally present; but if for a misdemeanor only, his personal appearance is unnecessary, and he may appear upon the arraignment by counsel.

SEC. 3. When his personal appearance is necessary, if he is in custody, the court may direct the officer in whose custody he is to bring him before it to be arraigned; and the officer shall do so accordingly.

SEC. 4. If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear to be arraigned when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail, or the money deposited, may direct the clerk to issue a bench warrant for his arrest.

SEC. 5. The clerk, on the application of the district attorney, may accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties.

SEC. 6. The bench warrant upon the indictment shall, if the offence be a felony, be substantially in the following form:

The district court for the county of ———, and Territory of Oregon:

In the name of the United States, to any sheriff (or other proper officer) in the Territory of Oregon—An indictment having been found on the —— day of ———, A. D. 18—, in the district court for the county of ———, charging C. D. with the crime of (designating it generally), you are therefore commanded forthwith to arrest the above named C. D. and bring him before this court, (or if the venue has been changed, take him before that court, as the case may be,) to answer the indictment; or if the court have adjourned for the term, that you deliver him into the custody of the jailor of the county (or city) of ———, the —— day of ———, A. D. 18—.

By order of the court.

E. F., *Clerk.*

Sec. 7. If the offence be a misdemeanor, the bench warrant shall be in a similar form, adding to the body thereof a direction to the following effect: "or if he require it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer the indictment."

Sec. 8. If the offence charged be bailable, the court, upon directing the bench warrant to issue, shall fix the amount of bail, and an endorsement shall be made upon the bench warrant, and signed by the clerk, to the following effect: "The defendant is to be admitted to bail in the sum of ——— dollars."

Sec. 9. The bench warrant may be served in any county in the same manner as a warrant of arrest.

Sec. 10. If the defendant be brought before a magistrate of another county for the purpose of giving bail, the magistrate shall proceed in respect thereto in the same manner as if the defendant had been brought before him upon a warrant of arrest.

Sec. 11. On taking bail, the magistrate shall certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having charge of the defendant; the officer shall then discharge the defendant from arrest, and, without delay, deliver the warrant and undertaking to the clerk of the court at which the defendant is required to appear.

Sec. 13. When the indictment is for felony, and the defendant, before the finding thereof, has given bail for his appearance to answer the charge, the court to which the indictment is presented, or sent, or removed for trial, may order the defendant to be committed to actual custody, either without bail, or unless he give bail in the increased amount to be specified in the order.

Sec. 13. If the defendant be present when the order is made, he shall be forthwith committed accordingly; if he be not present, a bench warrant shall be issued and proceeded upon in the manner provided in this chapter.

Sec. 14. If the defendant appear without counsel, he shall be informed by the court that it is his right to have counsel before being arraigned; and he shall be asked if he desire the aid of counsel.

Sec. 15. The arraignment shall be made by the court, or by the clerk or district attorney under its direction, and shall consist in reading the indictment to the defendant, and delivering to him a copy thereof, and of the endorsement thereon, including the list of witnesses endorsed on it or appended thereto, and asking him whether he pleads guilty or not guilty to the indictment.

Sec. 16. When the defendant is arraigned, he shall be informed that if the name by which he is indicted be not his true name, he shall then declare his true name, or be proceeded against by the name in the indictment.

Sec. 17. If on the arraignment, the defendant require it, he shall be allowed until the next day, or such further time may be allowed him as the court may deem reasonable to answer the indictment.

Sec. 18. If the defendant do not require time as provided in the last section, or if he do, then on the next day, or at such further day as the court may have allowed him, he may in answer to the arraignment, either move the court to set aside the indictment, or may demur or plead thereto.

Of setting aside the indictment.

SEC. 19. The indictment shall be set aside by the court in which the defendant is arraigned, and upon his motion in either of the following cases:

1. When it is not found indorsed and presented according to statute;
2. When the names of the witnesses examined before the grand jury are not inserted at the foot of the indictment, or endorsed thereon;
3. When a person is permitted to be present during the session of the grand jury, while the charge embraced in the indictment was under consideration, except such persons as are permitted to be present by statute.

SEC. 20. If the motion to set aside the indictment be not made, the defendant is precluded from afterwards taking the objections mentioned in the last section.

SEC. 21. The motion shall be heard at the time of the arraignment, unless for good cause the court postpone the hearing to another time.

SEC. 22. If the motion be denied, the defendant shall immediately answer the indictment, either by demurring or pleading thereto.

SEC. 23. If the motion be granted, the court shall order that the defendant, if in custody, be discharged therefrom, or if admitted to bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money be refunded to him, unless it direct that the case be resubmitted to the same or another grand jury.

SEC. 24. If the court direct that the case be re-submitted, the defendant, if already in custody, shall so remain, unless he be admitted to bail; or if already admitted to bail, or money have been deposited instead thereof, the bail or money shall be answerable for the appearance of the defendant to answer a new indictment.

SEC. 25. Unless a new indictment be found before the next grand jury of the county is discharged, the court shall on the discharge of such grand jury, make the order prescribed by section twenty-three.

SEC. 26. An order to set aside an indictment as provided in the preceeding sections, shall be no bar to a future prosecution for the same offence.

Of demurrers.

SEC. 27. The only pleading on the part of the defendant is either a demurrer or a plea.

SEC. 28. Both the demurrer and the plea shall be put in in open court, either at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose.

SEC. 29. The defendant may demur to the indictment, when it appears from the face thereof, either,

1. That the grand jury by which it was found, had no legal authority to enquire into the offence charged, by reason of its not being within the local jurisdiction of the county;
2. That it does not substantially conform to the requirements of the statute;

3. That more than one offence is charged in the indictment.
4. That the facts stated do not constitute a public offence;
5. That the indictment contains any matter which, if true, would constitute a legal justification or excuse of the offence charged, or other legal bar to the prosecution.

Sec. 30. The demurrer shall be in writing, signed either by the defendant or his counsel; it shall distinctly specify the ground of the objection to the indictment, or it shall be disregarded.

Sec. 31. Upon the demurrer being filed, the objections presented thereby shall be heard, either immediately or at such time as the court may appoint.

Sec. 32. Upon considering the demurrer, the court shall give judgment either allowing or disallowing it, and an order to that effect shall be entered upon the minutes.

Sec. 33. If the demurrer be allowed, the judgment shall be final upon the indictment demurred to, and shall be a bar to another prosecution for the same offence, unless the court, being of the opinion that the objection on which the demurrer is allowed, may be avoided in a new indictment, direct the case to be re-submitted to the same or another grand jury.

Sec. 34. If the court do not direct the case to be re-submitted, the defendant, if in custody, shall be discharged, or if admitted to bail, his bail shall be exonerated, or if he have deposited money instead of bail, the money shall be refunded to him.

Sec. 35. If the court direct that the case be submitted anew, the same proceedings shall be held thereon as are prescribed in sections twenty-four and five.

Sec. 36. If the demurrer be disallowed, the court shall permit the defendant at his election, to plead, which he shall do forthwith, or at such time as the court may allow; if he do not plead, judgment shall be pronounced against him.

Sec. 37. When the objections mentioned in section twenty-nine appear upon the face of the indictment, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment, or that the facts stated do not constitute a public offence, may be taken at the trial, under the plea of not guilty and in arrest of judgment.

CHAPTER —.

Of pleas.

Sec. 1. There are three kinds of pleas to an Indictment, a plea of
1. Guilty;
2. Not guilty;
3. A former judgment of conviction or acquittal of the offence charged, which may be pleaded either with or without the plea of not guilty.

Sec. 2. Every plea shall be oral, and shall be entered upon the minutes of the court.

Sec. 3. The plea shall be entered in substantially the following form:

1. If the defendant plead guilty: "The defendant pleads that he is guilty of the offence charged in this indictment;"

2. If he plead not guilty: "The defendant pleads that he is not guilty of the offence charged in this indictment;"

3. If he plead a former coviction or acquittal: "The defendant pleads that he has already been convicted or acquitted, (as the case may be,) of the offence charged in this indictment by the judgement of the court of —— (naming it,) rendered at —— (naming the place,) on the —— day of ——."

Sec. 4. A plea of guilty can in no case be put in, except by the defendant himself in open court, unless upon an indictment against a corporation, in which case it may be put in by counsel.

Sec. 5. The court may, at any time before judgment upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted.

Sec. 6. The plea of not guilty is a denial of every material allegation in the indictment.

Sec. 7. All matters of fact tending to establish a defence other than that specified in the third subdivision of section three, may be given in evidence, under the plea of not guilty.

Sec. 8. If the defendant were formerly acquitted on the ground of a variance between the indictment and the proof, or the indictment were dismissed upon an objection to its form or substance without a judgment of acquittal, it is not an acquittal of the same offence.

Sec. 9. When, however, he was acquitted on the merits, he is deemed acquitted of the same offence, notwithstanding a defect in the form or substance in the indictment on which he was acquitted.

Sec. 10. When the defendant shall have been convicted or acquitted upon an indictment for an offence consisting of different degrees, the conviction or acquittal is a bar to another indictment for the offence charged in the former, or for any inferior degree of that offence, or for an attempt to commit the same, or for an offence necessarily included therein, of which he might have been convicted under that indictment.

Sec. 11. If the defendant refuse to answer by demurrer or, plea a plea of not guilty shall be entered.

Of the change of venue in criminal cases.

Sec. 12. All criminal causes shall be tried in the county where the offence was committed, except where otherwise provided by law, unless it shall appear to the satisfaction of the court, by affidavit, that a fair and impartial trial cannot be had in such county, in which case the court before whom the cause is pending, if the offence charged in the indictment be punishable with death or imprisonment in the penitentiary, may direct the person accused to be tried in some adjoining county, where a fair and impartial trial can be held; but the party accused shall be entitled to a change of venue but once, and no more.

Sec. 13. When the venue is changed to an adjoining county, in a criminal case, the trial shall be conducted in all respects as if the indictment had been found in the county to which the venue is changed; and the costs accruing from a change of venue shall be paid by the county in which the offence was committed.

Sec. 14. When the court has ordered a change of venue, they shall require the accused, if the offence be bailable, to enter into recognizance with good and sufficient sureties, to be approved by the court or judge, in such sum as the court or judge may direct, conditioned for his appearance in the court to which the venue is changed, at the first day of the next term thereof, and abide the order of such court, and in default of such recognizance, a warrant shall be issued, directed to the sheriff, commanding him safely to convey the prisoner to the jail of the county where he or she is to be tried, there to be safely kept by the jailor thereof until discharged by due course of law.

SEC. 15. When a change of venue is allowed, the court shall recognize the witnesses on the part of the territory to appear before the court in which the prisoner is to be tried.

SEC. 16. The district attorney on behalf of the territory may also apply for a change of venue, and the court being satisfied that it will promote the ends of justice, may award a change of venue upon the same terms, and to the same extent that are provided in this chapter, and the proceedings on such change of venue, shall be in all respects as above provided.

The mode of trial—Issues.

SEC. 17. An issue of fact arises:

1. Upon a plea of not guilty; or
2. Upon a plea of a former conviction or acquittal of the same offence.

SEC. 18. An issue of fact shall be tried by a jury of the county in which the indictment was found, unless the action be removed by order of the court, as provided in this chapter.

SEC. 19. If the indictment be for a misdemeanor, trial may be had in the absence of the defendant, if he appear by counsel; but if for a felony, he shall be personally present.

CHAPTER —.

Criminal Calender.

SEC. 1. The clerk shall prepare a calender of the indictments pending to be tried at the term, enumerating them according to the date of the filing of the indictments, and specifying opposite to the title of each action whether it be for a felony or a misdemeanor, and whether the defendant be in custody o~~r on~~ bail; and shall in like manner enter therein all indictments found during the term, and on which issues of fact are joined.

SEC. 3. The issues on the calender shall be disposed of in the following order, unless, upon the application of either party, for good cause, the court direct an indictment to be tried out of its order:

1. Indictments for felony, when the defendant is in custody.
2. Indictments for misdemeanors, when the defendant is in custody.
3. Indictments for felony, when the defendant is on bail.
4. Indictments for misdemeanors, when the defendant is on bail.

SEC. 3. The clerk shall keep a register of all the criminal actions in the court, in which he shall enter,

1. All cases returned to the court by a magistrate.
2. All indictments found in the court, or sent or removed thereto for trial, with the time of finding the indictments, or when they were sent or removed; and
3. The time of arraignment of the demurrer or plea, and of the trial, conviction or acquittal of the defendant, together with a brief note of all the other proceedings in the action.

SEC. 4. The register shall be submitted to the court at its opening at every term.

Of postponement of trial.

SEC. [illegible] When an indictment is called for trial, or at any time previous thereto, the court may, upon sufficient cause showing by the affidavit of the defendant, or the statement of the district attorney, direct the trial to be postponed to another day in the same term, or to another term; all affidavits read upon the application shall at the same time be filed with the clerk.

SEC. 6. If, when the indictment is called for trial, the defendant appear and be ready for trial, and the district attorney be not ready, the court may order the indictment to be discharged, unless, being of the opinion that the public interests require the indictment to be retained for trial, it direct it to be so retained.

SEC. 7. If the court order the indictment to be discharged, the order is not a bar to another prosecution for the same offence, unless the court so direct; if the court so direct, judgment of acquittal shall be entered.

Challenging jurors.

SEC. 8. Trial juries for criminal actions shall be formed in the same manner as trial juries for civil actions.

SEC. 9. A challenge is an objection made to the trial jury, and is of two kinds:
1. To the pannel.
2. To an individual juror.

SEC. 10. When several defendants are tried togther, they cannot sever the challenges, but shall join therein.

SEC. 11. A challenge to the panel is an objection made to all the petit jurors returned, and may be taken by either party.

SEC. 12. A challenge to the panel can be founded only on a material departure from the forms prescribed by law in respect to the drawing and return of the jury.

SEC. 13. A challenge to the pannel shall be taken before a jury is sworn, and shall be in writing, specifying plainly and distinctly the facts constituting the ground of challenge.

SEC. 14. If the sufficiency of the facts alleged as a ground of challenge be denied, the adverse party may except to challenge; the exception need not be in writing, but shall be entered upon the minutes of the court; and thereupon the court shall proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

SEC. 15. If on the exception, the court deem the challenge sufficient, it may, if justice require it, permit the party excepting to withdraw his exception; and to deny the facts alleged in the challenge; if the exception be allowed, the court may in like manner permit an amendment of the challenge.

SEC. 16. If the challenge be denied, the denial may in like manner be oral, and shall be entered upon the minutes of the court, and the court shall proceed to try the question of fact.

SEC. 17. Upon the trial of the challenge, the officer, whether judicial or ministerial, whose irregularity is complained of, as well as any other person, may be examined to prove or disprove the facts alleged as the ground of the challenge.

SEC. 18. If, either upon an exception to the challenge, or a denial of the facts, the challenge be allowed, the court shall discharge the jury so far as the trial of the indictment in question is concerned, and no other jury for the trial thereof can be summoned for the same term; if it be disallowed, the court shall direct the jury to be empanneled.

SEC. 19. Before a juror is called, the defendant shall be informed by the court, or under its direction, that if he intend to challenge an individual juror, he shall do so when the juror appears, and before he is sworn.

SEC. 20. A challenge to an individual juror is either,

1. Peremptory; or,
2. For cause,

SEC. 21. It shall be taken when the juror appears, and before he is sworn; but the court may, for good cause, permit it to be taken after the juror is sworn, and before the jury is completed.

SEC. 22. A peremptory challenge can be taken by the defendant only, and may be oral; it is an objection to a juror for which no reason need be given, but upon which the court shall exclude him.

SEC. 23. If the offence charged be punishable with death, or imprisonment in the penitentiary for life, the defendant is entitled to twenty peremptory challenges; on a trial for any other offence, he is entitled to five peremptory challenges.

SEC. 24. A challenge for cause may be taken either by the territory or the defendant; it is an objection to a particular juror, and is either,

1. General, that the juror is disqualified from serving in any case; or
2. Particular, that he is disqualified from serving in the case on trial.

SEC. 25. General causes of challenge are,

1. A conviction for a felony.
2. A want of any of the qualifications prescribed by the laws to render a person a competent juror.
3. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body, as renders him incapable of performing the duties of a juror.

SEC. 26. Particular causes of challenge are of two kinds—

1. For such a bias as, when the existence of the facts is ascertained in judgment of law, disqualifies the juror, and which is known in this statute as implied bias.
2. For the existence of a state of mind on the part of a juror in reference to the case, or to either party, which satisfies the trier, in the exercise of a sound discretion, that he cannot try the issue impar-

tially and without prejudice to the substantial rights of the party challenging, and which is known in this statute as actual bias.

SEC. 27. A challenge for implied bias may be taken for all or any of the following causes, and for no other.

1. Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted, or to the defendant.

2. Standing in relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted, or in his employment on wages.

3. Being a party adverse to the defendant in a civil action, or having complained against, or been accused by him in a criminal prosecution.

4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment.

5. Having served on a trial jury, which has tried another person for the offence charged in the indictment;

6. Having been one of a jury formerly sworn to try the same indictment, and whose verdict was set aside, or which was discharged without a verdict, after the cause was submitted to it;

7. Having served as a juror in a civil action brought against the defendant, for the act charged as an offence;

8. If the offence charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty, in which case he shall not be permitted to serve as a juror.

SEC. 28. A challenge for actual bias may be taken for the cause mentioned in the second subdivision of section twenty-six, and for no other cause.

SEC. 29. An exemption from service on a jury shall not be cause of challenge, but the privilege of the person exempted.

SEC. 30. In a challenge for implied bias, one or more of the causes stated in section twenty-seven shall be alleged; in a challrnge for actual bias, the cause stated in the second subdivision of section twenty-six shall be alleged, in either case the challenge may be oral, but shall be entered upon the minutes of the court.

SEC. 31. The adverse party may except to the challenge in the same manner as to a challenge to a panel, and the same proceedings shall be had thereon, except that if the exception be allowed, the juror shall be excluded; the adverse party may also orally deny the facts alleged as the ground of challenge.

SEC. 32. If the facts be denied, the challenge shall be tried by the court, whether it be for implied or actual bias.

SEC. 33. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and shall be bound to answer every question pertinent to the enquiry therein.

SEC. 34. Other witnesses may also be examined on either side; and the rules of evidence applicable to the trial of other issues shall govern the admission or exclusion of testimony on the trial of the challege.

SEC. 35. The court shall determine the law and fact, and shall either allow or disallow the challenge, and direct an entry accordingly upon the minutes; if the challenge be allowed, the juror shall be excluded.

SEC. 36. All challenges to an individual juror, except peremptory, shall be taken first by the defendant, and then by the territory, and each party shall exhaust all his challenges to each juror as he is called, before the other begins.

SEC. 37. The challenges of either party need not all be taken at once; but they may be taken separately in the following order, including in each challenge all the causes of challenge belonging to the same class:

1. To the panel;
2. To an individual juror for a general disqualification;
3. To an individual juror for implied bias;
4. To an individual juror for actual bias.

SEC. 38. If all the challenges on both sides be disallowed, either party may still take a peremptory challenge, unless the peremptory challenges be exhausted.

SEC. 39. The following oath shall be administered to all jurors for the trial of all criminal cases not capital: "You shall well and truly try the issue between the territory of Oregon and the defendant, (or defendants, as the case may be,) according to the evidence: so help you God." In capital cases, the following oath shall be administered to the jurors: "You shall well an truly try, and true deliverance make between the territory of Oregon and the prisoner at the bar, whom you shall have in charge, according to evidence: so help you God."

SEC. 40. Any juror who is conscientiously scrupulous of taking either of the oaths above proscribed, shall be allowed to make affirmation, substituting the words "This you do under the pains and penalties of perjury," instead of the words "So help you God."

SEC. 41. The court may order a view by any jury empaneled to try a criminal case.

SEC. 42. Whenever any person indicted for a felony, shall on trial be acquitted by verdict, of part of the offence charged in the indictment, and convicted of the residue thereof, such verdict may be received and recorded by the court, and thereupon the person charged shall be adjudged guilty of the offence, if any, which shall appear to the court to be substantially charged by the residue of such indictment, and shall be sentenced and punished accordingly.

SEC. 43. In all cases of indictment in the district court for assault with intent to commit any felony, it may be lawful for the jury, in case they do not find the felonious intent charged, to convict of the asault; and the court shall have power to sentence the person so convicted to be punished by imprisonment in the jail of the county for a term not exceeding one year, or by fine not exceeding five hundred dollars.

SEC. 44. When any person indicted for an offence shall, on trial, be acquitted by the jury by reason of insanity, the jury, in giving their verdict of *not guilty*, *shall state that it was given for such cause*; and thereupon, if the discharge or going at large of such insane person shall be considered by the court manifestly dangerous to the peace and safety of the community, the court may order him to be committed to prison, or may give him into the care of his friends, if they shall give bonds with surety to the satisfaction of the court, conditioned that he shall be well and securely kept, otherwise he shall be discharged.

Sec. 45. No prisoner or person under recognizance, who shall be acquitted by verdict, or discharged because no indictment has been found against him, or for want of prosecution, shall be liable for any cost or fees of officers, or for any charge for subsistence while he was in custody.

CHAPTER —.

Of appeals from justices of the peace, new trials, and exceptions in criminal cases.

Sec. 1. Every person convicted before a justice of the peace of any offence, may appeal from the sentence to the district court, then next to be held in the same county, and such appellant shall be committed to abide the sentence of said justice until he shall recognize to the territory in such reasonable sum, with such sureties as said justice shall require, with condition to appear at the court appealed to, and there to prosecute his appeal, and to abide the sentence of the court thereon, and in the mean time to keep the peace and be of good behavior.

Sec. 2. The justice on such appeal shall make a copy of the conviction and other proceedings in the case, and transmit the same, together with the recognizance, if any shall be taken, to the clerk of the court appealed to; and the fees of the justice therefor shall be paid out of the county treasury in like manner as other costs in criminal prosecutions are paid.

Sec. 3. The appellant shall not be required to advance any fees in claiming his appeal, nor in prosecuting the same; but if convicted in the district court, or if sentenced for failing to prosecute his appeal, he may be required, as a part of the sentence, to pay the whole or any part of the costs of prosecution.

Sec. 3. If the appellant shall fail to enter and prosecute his appeal, he shall be defaulted on his recognizance, if any was taken, and the district court may award sentence against him for the offence whereof he was convicted in like manner as if he had been convicted thereof in that court; and if he be not then in custody, process may be issued to bring him into court to receive sentence.

Sec. 5. Whenever, upon suit brought upon any recognizance to prosecute an appeal, the penalty thereof shall be adjudged to be forfeited, or when, by leave of the court, such penalty shall have been paid to the county treasurer or the clerk of the district court, without a suit, or before judgment shall be given in a manner by law provided, if by law any forfeiture shall accrue to any person by reason of the offence of which the appellant was convicted, the court may award to him such sum as he may be entitled to out of such forfeiture.

Sec. 6. The district court may, at the term in which the trial of any indictment may be had, or within one year thereafter, or the supreme court within one year thereafter, on the petition or motion in writing of the defendant, grant a new trial for any cause for which by law a new trial may be granted, or when it shall appear to the court that justice has not been done, and on such terms or conditions as the court may direct.

Sec. 7. Any person who shall be convicted of an offence before the district court, being aggrieved by any opinion, direction or judgment of the court, in any matter of law, may allege exceptions to such opinion, direction or judgment, which exceptions, being reduced to writing in a summary mode and presented to the court any time before the end of the term, and found conformable to the truth of the case, shall be allowed and signed by the judge, and thereupon all further proceedings in that court shall be stayed, unless it shall clearly appear to the judge that such exceptions are frivolous, immaterial, or intended only for delay; and in that case judgment may be entered and sentence awarded in such manner as the judge may deem reasonable, notwithstanding the allowance of such exceptions.

Sec. 8. If, upon the trial of any person who shall be convicted in said district court, any question of law shall arise which, in the opinion of the judge, shall be so important or so doubtful as to require the decision of the supreme court, he shall, if the defendant desire it or consent thereto, report the case so far as may be necessary to present the question of law arising therein, and thereupon all proceedings in that court shall be stayed.

Sec. 9. Any person not being accused of an offence punishable with death or imprisonment in the penitentiary for a term not exceeding three years, who shall file exceptions, or for whose benefit a report shall be made by the judge, and proceedings stayed, as is provided in the two preceding sections, may recognize to the territory in such sum as the judge may order, with sufficient sureties for his personal appearance at the supreme court of the next term thereof, and to enter and prosecute his exceptions with effect and abide the sentence thereon, and in the mean time keep the peace and be of good behavior; and the judge may in his discretion allow any person so to recognize charged with an offence not punishable with death.

Sec. 10. If any person so filing exceptions, or desiring a report to be made by the judge, shall not so recognize, he shall be committed to prison to await the decision of the supreme court; and in that case, the clerk of the court in which the conviction was had shall file a certified copy of the record and proceedings in the case, in the supreme court, and the court shall have cognizance thereof, and consider and decide the questions of law, and shall render judgment, and award such sentence, or make such order thereon as law and justice shall require; and if a new trial is ordered, the cause shall be remanded to the said district court for such new trial; but the proceedings here prescribed shall not deprive any party of his writ of error for an error or defect appearing of record.

CHAPTER —.

Writs of error.

Sec. 1. In all cases of final judgment rendered upon an indictment, a writ of error to the supreme court may be allowed to the defendant. In capital cases this shall not be permitted, except upon the allowance of a judge of the supreme court, and after sufficieat notice to the district attorney of the time and place of making the application.

Sec 2. In all other than capital cases, writs of error shall issue as a matter of course, upon a mere application to the clerk of the supreme court, in term or vacation; but the writ shall not operate as a stay of proceedings, unless allowed in the manner provided in the preceding section.

Sec. 3. Applications for such allowance shall in all cases be found upon a transcript of the indictment and bill of exceptions, or other record, upon which error is alleged under the seal of the court where the indictment was tried.

Sec. 4. Upon filing the writ of error and the allowance of the judge, (if such allowance has been made) with the clerk of the court where the indictment was tried, he shall forthwith make returns thereto, containing a like transcript as is required in the last preceding section.

Sec. 5. If a stay of proceedings be allowed, the sheriff, upon being served with the district clerk's certificate thereof, shall cease all further proceedings in execution of the sentence, but shall retain the defendant in custody, and at his request take him before one of the judges of the supreme court for the purpose of giving bail if the offence charged be bailable.

Sec. 6. Such judge may admit the defendant to bail by recognizance, with sufficient surety; such recognizance shall be filed with the clerk of the supreme court.

Sec. 7. If the judgment below be affirmed, the sentence there pronounced shall be executed accordingly. If it be reversed, the supreme court may grant a new trial, or discharge the defendant altogether. In either case, the certificate of the clerk of the supreme court, under the seal of said court, shall be sufficient authority for the court below and its officers to act in the premises.

Sec. 8. Whenever the supreme court shall be equally divided in opinion on hearing a writ of error, the cause shall stand continued until all the judges are on the bench.

CHAPTER —.

Of judgments in criminal cases, and the execution thereof.

Sec. 1. Every court before whom any person shall be convicted upon an indictment for any offence not punishable with death, or by imprisonment in the penitentiary, or county jail, may in in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties in a reasanable sum to keep the peace, or to be of good behavior, or both, for any term not exceeding two years, and to stand committed until he shall so recognize.

Sec. 2. In case of the breach of the conditions of any such recognizance, the same proceedings shall be had that are by law prescribed in relation to recognizances to keep the peace.

Sec. 3. Whenever any person convicted of any offence shall be sentenced, to pay a fine or costs, or to be imprisoned in the penitentiary or county jail, the clerk of the court shall as soon as may be, make out and deliver to the sheriff of the county, or his deputy, a transcript from the minutes of the court of such conviction and sentence, duly certified by such clerk, which shall be sufficient authority for such sheriff to execute such sentence; and he shall execute the same accordingly.

SEC. 4. In every case in which punishment in the penitentiary is awarded against any convict, the form of the sentence shall be, that he be punished by confinement at hard labor; and he may also be sentenced to solitary imprisonment for such term as the court shall direct, not exceeding twenty days at one time; and in the execution of such punishment, the solitary imprisonment shall precede the punishment by hard labor, unless the court shall otherwise order.

SEC. 5. Whenever it shall appear to the court at the time of passing sentence upon any convict, who is to be punished by confinement in the penitentiary or county jail, that there is no jail in the county in which the offence was committed, suitable for the confinement of such convict, the court may order the sentence to be executed in any county in this territory in which there may be a jail suited for that purpose; and the expenses of such convict shall be borne if such convict was sentenced to imprisonment in the county jail by the county in which the offence was committed.

SEC. 6. When judgment of death is rendered, a warrant, signed by the judge and attested by the clerk under the seal of the court, shall be drawn and delivered to the sheriff; it shall state the conviction and judgment; and appoint a day in which the judgment shall be executed, which shall not be less than thirty nor more than sixty days from the time of judgment.

SEC. 7. The sheriff shall return and file with the clerk the warrant, with a statement of his doings thereon, and the clerk shall subjoin a brief abstract of such statement to the record of conviction and sentence.

Of pardons.

SEC. 8. In all cases in which the governor is authorized to grant pardons, he may upon the petition of the person convicted, grant a pardon upon such conditions and with such restrictions, and under such limitations as he may think proper, and he may issue his warrant to all public officers to carry into effect such constitutional pardon; which warrant shall be obeyed and executed instead of the sentence, if any, which was originally given. The governor may also, on good cause shown, grant respites or reprieves from time to time as he may think proper.

CHAPTER —.

Of the time of commencing criminal actions.

SEC. 1. There shall be no limitation of time within which a prosecution for murder shall be commenced. It may be commenced at any time after the death of the person killed.

SEC. 2. An indictment for any other felony than murder, shall be formed within three years after its commission.

SEC. 3. An indictment for any misdemeanor shall be fouud within two years after its commission.

SEC. 4. If the defendant shall absent himself from the territory, or shall secrete himself so as to prevent process being served upon him, the indictment may be found within the term herein limited after his coming within the territory, or within the reach of process, and no time during which defendant is not an inhabitant of, or usually resident within the territory, or shall secrete himself, shall be a part of the limitation.

SEC. 5. An indictment is found within the meaning of this chapter when it is duly presented by the grand jury in open court, and there received and filed.

CHAPTER —.

Miscellaneous provisions relating to criminal proceedings.

SEC. 1. When it appears that a defendant has committed a public offence, and there is reasonable ground of doubt, in which of two or more degrees he is guilty, he can be convicted of the lowest of these degrees only.

SEC. 2. When two or more defendants are jointly indicted for a felony, any defendant requiring it, shall be tried separately; in other cases, defendants jointly indicted may be tried separately or jointly in the discretion of the court.

SEC. 3. When two or more persons are included in the same indictment, the court may, at any time before the defendant has gone into his defence, on the application of the district attorney, direct any defendant to be discharged from the indictment, that he may be a witness for the territory.

SEC. 4. When two or more persons are included in the same indictment, and the court is of opinion that in regard to a particular defendant there is is not sufficient evidence to put him on his defence, it shall order him to be discharged from the indictment before the evidence is closed, that he may be a witness for his co-defendant; the order shall be an acquittal of the defendant discharged, and a bar to another prosecution for the same offence.

SEC. 5. A confession of the defendant, whether made in the course of judicial proceedings, or to a private person, cannot be given in evidence against him, when made under the influence of fear produced by threats, nor is it sufficient to warrant his conviction without proof that the offence charged has been committed.

SEC. 6. Proof of actual penetration into the body is sufficient to sustain an indictment for rape, or for the crime against nature.

SEC. 7. A conviction cannot be had upon the testimony of an accomplice, unless he be corroborated by such other evidence as tends to convict the defendant of the commission of the offence; and the corroboration is not sufficient if it merely show the commission of the offence, or the circumstances thereof.

SEC 8. If a juror have any personal knowledge respecting a fact in controversy in a cause, he shall declare it in open court during the trial; if, during the retirement of a jury, a juror declare a fact which could be evidence in the cause, as of his own knowledge, the jury shall return into court, in either of these cases, the juror making the statement shall be sworn as a witness, and examined in the presence of the parties.

SEC. 9. The court shall decide all questions of law which shall arise in the course of the trial.

SEC. 10. On the trial of an indictment for an offence, questions of law are to be decided by the court; except in cases of libel, saving the right of the defendant to except. Questions of fact by the jury. And although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

SEC. 11. In charging the jury, the court shall state to them all matters of law which it thinks necessary for their information in giving their verdict; and if it present the facts of the case, shall, in addition to what it may deem its duty to say, inform the jury that they are the exclusive judges of all questions of fact.

SEC. 12. After hearing the charge, the jury may either decide in court, or may retire for deliberation; if they do not agree without retiring, one or more officers shall be sworn to keep them together in some private and convenient place, and not to permit any person to speak to or communicate with them, nor do so themselves, unless it be by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court.

SEC. 13. When a defendant who has given bail appears for trial, the court may in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county, to abide the judgment or further order of the court; and he shall be committed and held in custody accordingly.

SEC. 14. Upon retiring for deliberation, the jury may take with them all papers which have been received as evidence in the cause, or copies of such parts of public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession.

SEC. 15. The jury may also take with them notes of the testimony, or other proceedings on the trial taken by themselves, or any of them, but none taken by any other person.

SEC. 16. After the jury has retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of a point of law arising in the cause, they shall require the officer, to conduct them into court. Upon their being brought into court, the information required shall be given in the presence of, or after notice to the district attorney, and the defendant or his counsel.

SEC. 17. If, at any time during the trial, any of the jury become so sick as to prevent the continuance of their duty, or any other accident or cause occur to prevent them being kept together for deliberation, the jury may be discharged by the court and the trial commence anew at the same or another term.

SEC. 18. Upon an indictment for an offence consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto; upon an indictment for any offence, the jury may find the defendant not guilty of the commission thereof, and guilty of an attempt to commit the same; upon an indictment for murder, if the jury find the defendant not guilty thereof, they may, upon the same indictment, find the defendant guilty of manslaughter.

Sec. 19. In all other cases the defendant may be found guilty of any offence, the commission of which is necessarily included in that with which he is charged in the indictment.

Sec. 20. On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which judgment shall be entered accordingly, and the case as to the rest may be tried by another jury.

Sec. 21. When a verdict is rendered, and before it is recorded, the jury may be polled on the requirement of either party, in which case they shall be severally asked whether it is their verdict; and if any one answer in the negative, the jury shall be sent out for further deliberation.

Sec. 22. When a verdict is given, and is such as the court may receive, the clerk shall immediately record it in full on the minutes, and shall read it to the jury, and inquire of them whether it is their verdict; if any juror disagree, the fact shall be entered upon the minutes and the jury again sent out; but if no disagreement be expressed, the verdict is complete, and the jury shall be discharged from the case.

Sec. 23. If the defence to an indictment be the insanity of the defendant, the jury shall be instructed, if they acquit him on that ground, to state that fact with their verdict.

Sec. 24. After a plea or verdict of guilty in a case where a discretion is conferred upon the court as to the extent of the punishment, the court, upon the suggestion of either party that there are circumstances which may be properly taken into view, either in aggravation or mitigation of the punishment, may in its discretion hear the same summarily at a specified time, and upon such notice to the adverse party as it may direct.

Sec. 25. The circumstances shall be presented by the testimony of witnesses examined in open court, except that when a witness is so sick or infirm as to be unable to attend, his deposition shall be taken by a magistrate of the county, out of court, at a specified time and place, upon such notice to the adverse party as the court may direct.

Sec. 26. Bail shall, when requested by either party, or ordered by the court, judge or magistrate, justify by affidavit before the court, judge or magistrate, as the case may be.

Sec. 27. The clerk of the court at which any indictment is to be tried, shall at all times, upon the application of either party, issue as many blank subpœnas under the seal of the court, and subscribed by him as clerk, for witnesses within the territory as may be required.

Sec. 28. When a person has been held to answer for a public offence, if an indictment be not found against him at the next term of the court at which he is held to answer, the court shall order the presention to be dismissed, unless good cause to the contrary be shown.

Sec. 29. If a defendant indicted for a public offence, whose trial has not been postponed upon his application, be not brought to trial at the next term of the court in which the indictment is triable, after it is found, the court shall order the indictment to be dismissed, unless good cause to the contrary be shown.

Sec. 30. If the defendant be not indicted or tried as is provided in the last two sections, and sufficient reason therefor be shown, the court may order the action to be continued from term to term, and in the mean time may discharge the defendant from custody, on his own undertaking, or on the undertaking of bail for his appearance to answer the charge at the time to which the action is continued.

Sec. 31. If the court direct the action to be dismissed, the defendant shall, if in custody, be discharged therefrom; or if admitted to bail, his bail shall be exonerated, or money deposited instead of bail shall be refunded to him.

Sec. 32. The court may in its discretion, or upon the application of the district attorney, and in furtherance of justice, order an action after indictment to be dismissed; but in that case the reasons of the dismissal shall be set forth in the order, which shall be entered upon the minutes.

Sec. 33. The entry of a *nolle prosequi* is abolished, and the district attorney cannot discontinue or abandon a prosecution for a public offence, except as provided in the last section.

Sec. 34. An order for the dismissal of the action as provided in this chapter, shall be a bar to another prosecution for the same offence, if it be a misdemeanor; but it shall not be a bar, if the offence be a felony.

Sec. 35. When property alleged to have been stolen or embezzled, comes into the custody of a peace officer, he shall hold it subject to the order of the magistrate authorized by the next section, to direct the disposal thereof.

Sec. 36. On satisfactory proof of the title of the owner of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling the property, shall order it to be delivered to the owner on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order shall entitle the owner to demand and receive the property.

Of the judgment roll.

Sec. 1. When judgment upon a conviction is rendered, the clerk shall enter the same upon the minutes, stating briefly the offence for which the conviction has been had, and shall immediately annex together and file the following papers which constitute the judgment roll:

1. A copy of the minutes of challenge interposed by the defendant to the panel of the grand jury, or to an individual grand juror, and the proceedings and decision thereon;
2. The indictment, and a copy of the minutes of the plea or demurrer;
3. A copy of the minutes of a challenge, which may have been interposed to the panel of the trial jury, to an individual juror, and the proceedings and decision thereon.
4. A copy of the minutes of the trial;
5. A copy of the minutes of the judgment;
6. The bill of exceptions, if there be one.

Sec. 2. A copy of the minutes of any conviction and judgment duly certified by the clerk, in whose custody such minutes shall be, under his official seal, together with a copy of the indictment on which the conviction shall have been had, certified in the same manner, shall be evidence in all courts and places, of such conviction and judgment, without the production of the judgment roll.

Sec. 3. No writ of error shall stay or delay the execution of a judgment or execution thereon, in any criminal case, unless the same shall be allowed by a judge of the supreme court, with an express direction therein that the same is to operate as a stay of proceedings on the judgment upon which such writ shall be brought. And upon such direction being given, during the pendency of the writ of error, the defendant shall remain in custody, or be let to bail if it be a bailable offence.

Sec. 4. If the supreme court shall upon writ of error, affirm the judgment, it shall direct the sentence pronounced to be executed; and the same shall be executed accordingly. If it shall reverse the judgment rendered, it shall either direct a new trial, or that the defendant be absolutely discharged, as the case may require. If a a new trial be ordered the same shall be had in the court in which the indictment was first tried.

Sec. 5. If a defendant in any indictment shall have been let to bail after verdict or trial, and sholl neglect to appear before any court or officer, at any time or place at which he is bound to appear, and submit to the jurisdiction of the proper court or officer, the court or officer before which he shall hove been bound to appear, may cause such defendants to be arrested in the same manner as upon the finding of an indictment, and may direct his recognizance to be prosecuted.

Sec. 6. Nothing in this act contained shall inviolate action, suit, prosecution, process, pleading or proceeding commenced, issued, had or taken before, or pending when it goes into effect.

ACTIONS AT LAW.

CHAPTER I.

Of the form of actions at law, and of the parties thereto.

Sec. 1. The distinction between the forms of actions at law heretofore existing is abolished; and there shall be in this territory hereafter but one form of action at law for the enforcement or protection of private wrongs, except as otherwise expressly provided by statute.

Sec. 2. In such action the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

Sec. 3. Every action shall be prosecuted in the name of the real party in interest, except as otherwise provided in section five.

SEC. 4. In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defence existing at the time of, or before notice of the assignment; but this section shall not apply to a negotiable promissory note or bill of exchange transferred in good faith and upon good consideration before due.

SEC. 5. An executor or administrator, a trustee of an express trust, or a person expressly authorized by statute may sue without joining with him the person for whose benefit the action is prosecuted. A person with whom, or in whose name a contract is made for the benefit of another, is the trustee of an express trust within the meaning of this section.

SEC. 6. When a married woman is a party, her husband shall be joined with her, except that,

1. When the action concerns her separate property she may sue alone.

2. When the action is between herself and her husband, she may sue or be sued alone.

But when her husband cannot be joined with her, as herein provided, and she is an infant under twenty-one years of age, she shall prosecute or defend by her next friend.

SEC. 7. When an infant is a party, he shall appear by guardian, who may be appointed by the court in which the action is brought, or by a judge thereof.

SEC. 8. The guardian shall be appointed as follows:

1. When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years; or if under that age, upon the application of a relation or friend of the infant.

2. When the infant is defendant, upon an application of the infant, if he be of the age of fourteen years, and apply within twenty days after the service of the summons; if he be under the age of fourteen, or neglect so to apply, then upon the application of any other party to the action, or of a relation or friend of the infant.

SEC. 9. A father, or in case of his death or desertion of his family, the mother may prosecute as plaintiff for the seduction of the daughter, and the guardian for the seduction of a ward, though the daughter or ward be not living with, or in the service of the plaintiff at the time of the seduction or afterwards, and there be no loss of service.

SEC. 10. An unmarried female over twenty-one years of age may prosecute as plaintiff an action for her own seduction, and recover therein such damages as may be assessed in her favor; but the prosecution of an action to judgment by the father, mother, or guardian, as prescribed in the preceding section, shall be a bar to an action by such unmarried female.

SEC. 11. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promisory notes may, all or any of them, be included in the same action, at the option of the plaintiff.

SEC. 12. No action shall abate by the death, marriage or other disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death, marriage, or other disability of a party, the court may, on motion, allow the action to be continued by or against his representatives or successor in interest.

SEC. 13. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court shall order them to be brought in.

Of the place of trial—Actions at law.

SEC. 14. Actions for the following causes, shall be tried in the county in which the subject of the action, or some part thereof is situated, subject to the power of the court to change the place of trial, in the cases provided by statute:

1. For the recovery of real property or of an estate or interest therein, or for the determination in any form, of such right or interest, and for injuries to real property:
2. For the partition of real property;
3. For the foreclosure of a mortgage of real property;
4. For the recovery of personal property distrained for any cause.

SEC. 15. Actions for the following causes shall be tried in the county where the cause, or some part thereof, arose, subject to the like power of the court to change the place of trial in the cases provided by statute:

1. For the recovery of a penalty or forfeiture imposed by statute; except that when it is imposed for an offence committed on a lake, river, or other stream of water, situated in two or more counties, the action may be brought in any county bordericg on such lake, river or stream, and opposite to the place where the offence was committed:
2. Against a public officer or person specially appointed to execute his duties for an act done by him in virtue of his office; or against a person who, by his command, or in his aid, shall do anything touching the duties of such officer.

SEC. 16. In all other cases, the action shall be tried in the county in which the parties, or any of them reside, at the commencement of the action; or if none of the parties reside in this territory, the same may be tried in any county which the plaintiff may designate in his complaint; subject, however, to the power of the court to change the place of trial, as provided by statute.

SEC. 17. A change of venue, or the place of trial, may be had on the application of either of the parties in the following cases:

1. When the county in which the action is pending shall be a party thereto or interested therein;
2. When the judge shall be directly interested in the action, or connected by blood or affinity with any person so interested, nearer than in the fourth degree;
3. When the party applying for such change shall make and file an affidavit stating that the judge or the inhabitants of the county are so prejudiced against him that he cannot expect an impartial trial, which affidavit shall set forth the facts constituting such prejudice, and also that the application for the change of venue is not made for the purpose of delay;

SEC. 18. An application for the change of venue may be made, either to the court in term time or to a judge thereof in vacation, and the change shall be to the most convenient county to which there shall be no exception of the character of those above enumerated. But neither party shall be entitled to more than one change of venue, except for causes not in existence when the first change may have been taken.

SEC. 19. If the change of venue be ordered by the judge in vacation, he shall immediately transmit to the clerk of the court where the cause is pending, the affidavit if any, and the order for the change, who shall file the same in his office.

SEC. 20. In such cases, as well as where the order shall be made in open court, the clerk shall forthwith transmit to the clerk of the proper court a transcript of the record and proceedings in such cause with all the original papers filed therein, having first made out and filed in his own office authenticated copies of all such original papers.

SEC. 21. The costs of such change of venue shall be paid by the applicant therefor, and not taxed as a part of the costs of the case, and the clerk may require payment of such costs before the transcript and papers shall be transmitted as aforesaid.

SEC. 22. If such transcript of the record any proceedings be not transmitted to the clerk of the proper court within twenty days after the order for the change of venue shall be filed, (unless a longer time be allowed by the judge) such order may be annulled by the court or judge who made the same, and in such case no other change of venue shall be allowed to such applicant.

SEC. 23. Upon filing such transcript and papers in the office of the clerk of the court to which the same were certified, the cause shall be docketed, and the same proceedings had as though it had originated in that court.

Of the manner of commencing actions at law.

SEC. 24. Actions at law in the severel district courts of this territory shall be commenced by the filing of a complaint with the clerk of the court, and the issuing of a summons thereon.

SEC. 25. The clerk shall endorse on the comploint the day, month, and year that the same shall be filed; and at any time thereafter, the plaintiff may have a summons issued, which shall be directed to the defendant, and shall be signed by the clerk, and issued under the seal of the court, and shall be made returnable on the first day of the next term of court.

SEC. 26. The summons shall require the defendant to appear and answer the complaint within the time mentioned in this section, or that judgment by default will be taken against him, as follows:

1. If he be served within the county in which the action is brought, ten days before term of the court court; or if in any other county, thirty days before the court, he shall be required to appear and answer the complaint on the return day of the summons.

2. If he be served less than ten days, within the county in which the action is brought, or less than thirty days in any other county, he shall be required to appear and answer the complaint on the first day of the term next after the return day of the summons.

SEC. 27. There shall also be inserted in the summons a notice in substance as follows:

1. In an action arising on contract for the recovery of money or damages only, that the plaintiff will take judgment for a sum specified therein if the defendant fail to answer the complaint.

2. In other actions, that if the defendant fail to answer the complaint the plaintiff will apply to the court for the relief demanded therein.

SEC. 28. The summons shall be served by the sheriff of the county where the defendant is found, or by his deputy, or by a person specially appointed by him, or by a person appointed by the judge of the court in which the action is brought. The summons shall be returned to the office of the clerk from which it issued, with the certificate of the sheriff or his deputy, or the affidavit of the person appointed, of its service, and the service of a copy of the complaint. When served out of the county in which the action is brought, the summons may be returned by mail, and the postage taxed with the costs of suit.

SEC. 29. The summons shall be served by delivering a copy thereof, together with a copy of the complaint certified by the clerk as follows:

1. If the suit be against a corporation, to the president or other head of the corporation, secretary, cashier, or managing agent thereof;

2. If against any county in this territory, to one of the board of commissioners of such county, or to the clerk of the commissioners;

3. If against a minor under the age of fourteen years, to such minor personally, and also to his father, mother or guardian; or if there be none within this territory, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed;

4. If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, to such guardian and to the defendant personally.

5. In all other cases to the defendant personally, or if he be not found, to some white person of the family, above the age of fourteen years, at the dwelling house or usual place of abode of the defendant.

SEC. 30. When service of the summons cannot be made as prescribed in the last preceding section, and the the defendant after due diligence cannot be found within the territory, and when that fact appears by affidavit to the satisfaction of the court or judge thereof, and it in like manner appears that a cause of action exists against the defendant, or that he is a proper party to an action relating to real property in this territory, such court or judge may grant an order that the service be made by publication of a summons in either of the following cases:

1. When the defendant is a foreign corporation, and has property within the territory, or the cause of action arose therein:

2. When the defendant being a resident of this territory, has departed therefrom with intent to defraud his creditors, or to avoid the service of a summons, or shall keep himself concealed therein with the like intent;

3. When the defendant is not a resident of the territory but has property therein, and the action arises on contract, and the court has jurisdiction of the subject of the action;

4. When the action is for divorce in the cases prescribed by law.

SEC. 31. The order shall direct the publication to be made in a newspaper published in the county where the action is brought, and if there be no newspaper published in the county, then in a newspaper to be designated as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, not less than once a week for six weeks; or in case the defendant be absent from, or residing out of this territory, not less than once a week for three months. In case of publication, the court or judge shall also direct a copy of the summons and complaint to be forthwith deposited in the post office, directed to the defendant at his place of residence, unless it shall appear that such residence is not known to the party making the application. When publication is ordered, personal service of a copy of the summons and complaint out of the territory shall be equivalent to publication and deposit in the post office. In either case, the service of the summons shall be deemed complete at the expiration of the time prescribed in the order for publication.

SEC. 32. The defendant against whom publication is ordered, or his representatives, on application and sufficient cause shown, at any time before judgment, shall be allowed to defend the action; and except in an action for divorce, the defendant, against whom publication is ordered, or his representatives may in like manner, upon good cause shown, be allowed to defend after judgment, and within one year after the rendition of such judgment on such terms as may be just, and if the defence be successful, and the judgment or any part thereof have been collected or otherwise enforced, such restitution may thereupon be compelled as the court shall direct.

SEC. 33. Whenever it shall appear by the return of the sheriff, his deputy, or the person appointed to serve a summons, that he has not served it upon the defendants as prescribed in the twenty-ninth section, the clerk shall at the request of the plaintiff, issue another summons, and so on until service be had; or the plaintiff may proceed by publication in the manner before stated, at his election.

SEC. 34. When the action is against two or more defendants, and the summons is served on one or more, but not all of them, the plaintiff may proceed as follows:

1. If the action be against defendants jointly indebted upon a contract, he may proceed against the defendants served, unless the court otherwise direct; and if he recover judgment, it may be entered against all the defendants thus jointly indebted, so far only as that it may be enforced against the joint property of all and the seperate property of the defendant served, and if they are subject to arrest against the persons of the defendants served; or

2. If the action be against defendants severally liable, he may proceed against the defendants served, in the same manner as if they were the only defendants.

SEC. 35. Proof of the service of the summons and complaint shall be as follows:

1. If served by the sheriff or his deputy, the certificate of such sheriff or deputy; or

2. If by any other person, his affidavit thereof; or

3. In case of publication, the affidavit of the printer or his foreman or his principal clerk, showing the same; and an affidavit of a deposit of a

copy of the summons and complaint in the post office, if the same shall have been deposited; or

4. The written admission of the defendant. In case of service, otherwise than by publication, the certificate, affidavit or admission must state the time and place of service.

SEC. 36. From the time of the service of the summons and complaint in an action at law, the court shall be deemed to have acquired jurisdiction, and to have control of all the subsequent proceedings. A voluntary appearance of the defendant shall be equivalent to personal service of the summons upon him.

Of the pleadings in actions of law.

SEC. 37. All the forms of pleading heretofore existing in actions at law, inconsistent with the provisions of this act, are abolished; and hereafter the forms of pleading, and the rules by which the sufficiency of the pleadings is to be determined, shall be those prescribed by statute.

SEC. 38. The only pleadings on the part of the plaintiff shall be:

1. The complaint;
2. The demurrer; or
3. The reply.

And on part of the defendant:

1. The demurrer; or
2. The answer.

The complaint.

SEC. 39. The first pleading on the part of the plaintiff, shall be the complaint.

SEC. 40. The complaint shall contain:

1. The title of the cause, specifying the name of the court, and the name of the county in which the action is brought, and the names of the parties to the action, plaintiff and defendant.

2. A plain and concise statement of the facts constituting the cause of action, without unnecessary repetition.

3. A demand of the relief which the plaintiff claims. If the recovery of money, or damages be demanded, the amount thereof shall be stated.

The demurrer.

SEC. 41. The defendant may demur to the complaint within the time required in the summons to answer, when it appears upon the face thereof, either:

1. That the court has no jurisdiction of the person of the defendant, or the subject of the action; or

2. That the plaintiff has not legal capacity to sue; or

3. That there is another action pending between the same parties for the same cause; or

4. That there is a defect of parties, plaintiff or defendant; or

5. That several causes of action have been improperly united; or

6. That the complaint does not state facts sufficient to constitute a cause of action.

SEC. 42. The demurrer shall distinctly specify the grounds of objection to the complaint, unless it does so it may be disregarded. It may be taken to the whole complaint, or to any of the alleged causes of action stated therein.

SEC. 43. If the complaint be amended, a copy thereof shall be served on the defendant or his attorney of record, and the defendant shall answer the same within such time as may be prescribed by the court, and if he omit to do so, the plaintiff may proceed to obtain judgment as in other cases of failure to answer.

SEC. 44. When any of the matters enumerated in section forty-one do not appear upon the face of the complaint, the objection may be taken by answer.

SEC. 45. If no objection be taken, either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

The answer.

SEC. 46. The answer of the defendant shall contain;

1. A specific denial of each material allegation of the complaint controverted by the defendant, according to his knowledge, information or belief, or of any knowledge or information thereof sufficient to form a belief.

2. A plain and concise statement of any new matter constituting a defence or set-off, without unnecessary repetition.

SEC. 47. The defendant may set forth by answer as many defenses as he may have. They shall each be seperately stated, and refer to the causes of action which they are intended to answer, in any manner by which they may be intelligibly distinguished.

SEC. 48. The defendant may demur to one or more of several causes of actions stated in the complaint, and answer the residue.

SEC. 49. Sham and irrelevant answers and defenses may be stricken out on motion, and upon such terms as the court may in its discretion impose.

The reply.

SEC. 50. When the answer contains new matter constituting a defence or set-off, the plaintiff may, within ten days, reply to such new matter, denying specifically each allegation controverted by him according to his knowledge, information or belief, or any knowledge or information thereof sufficient to form a belief, and he may allege, in a plain and concise manner, without unnecessary repetition, any new matter, not inconsistent with the complaint, constituting a defence to such new matter in the answer; or he may demur to the same for insufficiency, stating in his demurrer the grounds thereof, and the plaintiff may demur to one or more of several defenses or set-offs in the answer, and reply to the residue.

Sec. 51. If the answer contain a statement of new matter constituting a defence, and the plaintiff fails to reply or demur thereto within the time prescribed by law, the defendant may move in court for such judgment as he shall be entitled to upon such statement, and if the case require it, a writ of inquiry of damages may be issued.

Sec. 52. If a reply of the plaintiff to any defence set up by the answer of the defendant be insufficient, the defendant may demur thereto, and shall state the grounds thereof.

General rules of pleading.

Sec. 53. Every pleading shall be subscribed by the party or his attorney, and, except a demurrer, shall also be verified by affidavit, as set forth in the next section.

Sec. 54. The verification shall be to the effect that the same is true to the knowledge of the person making it, except as to matters stated on information and belief, and as to those matters that he believes it to be true. The affidavit shall be made by the party, or if there be several parties united in interest, and pleading together by one of such parties, if he be within the county in which the action is brought, and capable of making the affidavit, unless the action or defence be founded upon a written instrument for the payment of money only, and such instrument be in the possession of the agent or attorney, or if all the material allegations of the pleading be within the personal knowledge of the agent or attorney, in which case the affidavit may also be made by such agent or attorney. If the party pleading shall not be within the county in which the action is brought, such pleading may be verified by the party, his agent or attorney, or by any person having a knowledge of the facts, and when the affidavit shall be made by any other person than the party, he shall set forth in it his knowledge, or the grounds of his belief on the subject, and the reason why it is not made by the party. When a corporation is a party, the verification may be made by any officer thereof, and when the territory, or any officer thereof in its behalf is a party, the verification may be made by any person acquainted with the facts. The verification may be omitted when an admission of the truth of the allegations might subject the party to prosecution for felony. And no pleading shall be used in a criminal prosecution against the party, as proof of a fact admitted or alleged in such pleading.

Sec. 55. It shall not be necessary for a party to set forth in a pleading, a copy of the instrument of writing, or the items of an account therein alleged, but unless he file a verified copy thereof with such pleading and serve the same on the adverse party, he shall within ten days after a demand thereof in writing, deliver to the adverse party, a copy of such instrument of writing, or the items of an account, verified by his own oath, or that of his agent or attorney, to the effect that he believes it to be true; or be precluded from giving evidence thereof. The court, or a judge thereof may order a further account when the one delivered is defective, and the court may in all cases order a bill of particulars of the claim of either party to be furnished.

SEC. 56. In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed, with a view of substantial justice between the parties.

SEC. 57. If irrelevant or redundant matter be inserted in a pleading, it may be stricken out on motion of any person aggrieved thereby; and when the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defence is not apparent, the court may require the pleading to be made definite and certain by amendment.

SEC. 58. In pleading a judgment or other determination of a court or officer of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish on the trial the facts conferring jurisdiction.

SEC. 59. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his part; and if such allegation be controvered, the party pleading shall be bound to establish on the trial the facts showing such performance. In an action or defence founded upon an instrument for the payment of money only, it shall be sufficient for the party to give a copy of the instrument, and to state that there is due to him thereon from the adverse party a specific sum which he claims.

SEC. 60. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

SEC. 61. In an action for libel or slander it shall not be necessary to state in the complaint any extrinsic facts, for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff shall be bound to establish on trial that it was so published or spoken.

SEC. 62. In the actions mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances, to reduce the amount of damages; and whether he prove the justification or not, he may give in evidence the mitigating circumstances.

SEC. 63. In an action to recover the possession of property, distrained doing damage, an answer that the defendant or person by whose command he acted was lawfully possessed of the real property upon which the distress was made, and that the property distrained was at the time doing damage thereon, shall be good, without setting forth the title to such real property.

SEC. 4. The plaintiff may unite several causes of action in the same complaint when they all arise out of

1. Contract, express or implied; or,
2. Injuries, with or without force, to the person; or,
3. Injuries, with or without force, to property; or,
4. Injuries to character; or,

5. Claims to recover real property, with or without damages for withholding thereof, and the rents and profits of the same; or,

6. Claims to recover personal property, with or without damage for the withholding thereof; or,

7. Claims against a trustee, by virtue of a contract, or by operation of law.

But the causes of action so united, must all belong to one only of these classes, and must affect all the parties to the action, and not require different places of trial, and must be separately stated.

SEC. 65. Every material allegation of the complaint, not specifically controverted by the answer, and every material allegation of new matter in the answer, not specifically controverted by the reply, shall, for the purposes of the action, be taken as true; but the allegation of new matter in a reply shall not in any respect conclude the defendant, who may on the trial countervail it by proofs, either in direct denial or by way of avoidance.

SEC. 66. A material allegation in a pleading is one essential to the claim or defence, and which could not be stricken from the pleading without leaving it insufficient.

Mistakes in pleadings and amendments.

SEC. 67. No variance between the allegation in a pleading and the proof shall be deemed material, unless it have actually misled the adverse party to his prejudice in maintaing his action or defence upon the merits. Whenever it shall be alleged that a party has been so misled, that fact shall be proved to the satisfaction of the court, and in what respect he has been misled; and thereupon the court may order the pleading to be amended upon such terms as shall be just.

SEC. 68. When the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment, without costs.

SEC. 69. When, however, the allegationof the cause of action or defence to which the proof is directed is unproved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance within the last two sections, but a failure of proof.

SEC. 70. Any pleading may be once amended by the party of course, without costs and without prejudice to the proceedings already had, at any time before the period for answering it shall expire; in such case, a copy of the amended pleading shall be served on the adverse party.

SEC. 71. After the decision upon a demurrer, if it be overruled, and it appears that such demurrer was interposed in good faith, the court may in its discretion allow the party to plead over upon such terms as may be proper. If the demurrer be sustained, either party may amend any pleading demurred to, upon such terms as may be just, and he shall serve a copy of the same, as amended, on the adverse party within such time as may be prescribed by the court.

SEC. 72. The court may, before or after judgement, in furtherance of justice, and on such terms as may be proper, amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, or by inserting other allegations material to the case, when the amendment does not change substantially the claim or defence, by conforming the pleading or proceeding to the facts proved.

SEC. 73. The court may likewise in its discretion, and upon such terms as may be just, allow an answer or reply to be made, or other act to be done after the time limited by this act, or by an order enlarge such time; and may also, in its discretion, and upon such terms as may be just, at any time within one year after notice thereof, relieve a party from a judgment, order, or other proceeding taken against him through his mistake, inadvertance, surprise, or excusable neglect.

SEC. 74. When the plaintiff shall be ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name; and when his true name shall be discovered, the pleading or proceeding may be amended accordingly.

SEC. 75. The court shall, in every stage of an action, diregard any error or defect in the pleadings or proceedings which shall not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect.

SEC. 76. The plaintiff and defendant, respectively, may be allowed, on motion, to make a supplemental complaint, answer, or reply, alleging facts material to the case occurring after the former complaint, answer, or reply.

Arrest and bail.

SEC. 77. No person shall be arrested in an action at law except as prescribed by this act, but this provision shall not apply to proceedings for contempt.

SEC. 78. The defendant may be arrested as hereinafter prescribed in the following cases:

1. In an action for the recovery of damages on a cause of action not arising out of contract, when the defendent is not a resident of the territory, or is about to remove therefrom, or when the action is for a wilful injury to person or to property, the defendant knowing the property to belong to another.

2. In an action for the recovery of money, or damages on a cause of action arising upon contract, express or implied when the defendant is about to depart from the territory with intent to defraud his creditors.

3. In an action for a fine or penalty, or on a promise to marry, or for money or property embezzled, or fraudulently misapplied, or converted to his own use by a public officer or officers of a corporation, or an attorney, factor, broker, agent or clerk, in the course of his employment as such; or by any other person in a fiduciary capacity, or for misconduct or neglect in office, or in a professional employment.

4. In an action to recover the possession of personal property unjustly detained when the property, or any part thereof has been concealed, removed, or disposed of, so that it cannot be found or taken by the sheriff, and with intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof.

5. When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought, or in concealing or disposing of the property, for the taking, detention or conversion of which the action is brought.

6. When the defendant has removed, or disposed of his property, or is about to do so, with intent to defraud his creditors.

But no female shall be arrested, in any action except for a wilful injury to person or property.

SEC. 79. An order for the arrest of the defendant shall be obtained from a judge of any district court in this territory.

SEC. 80. The order may be made when it shall appear to the judge by the affidavit of the plaintiff, or any other person, that a sufficient cause of action exists, and that the case is one of those mentioned in section seventy-eight. The affidavit shall be either positive or upon information and belief, and when upon information and belief, it shall state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavit shall be filed with the clerk of the court in which the action is brought.

SEC. 81. Before making the order the judge shall require a written undertaking on the part of the plaintiff with or without sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least two hundred dollars. If the undertaking be executed by the plaintiff without sureties, he shall annex thereto an affidavit that he is a resident and householder, or freeholder within the territory, and worth double the sum specified in the undertaking, over all his debts and liabilities.

SEC. 82. The order may be made to accompany the summons, or at any time afterwards before judgment. It shall require the sheriff of the county where the defendant may be found forthwith to arrest him and hold him to bail in a specified sum, and to return the order at a time therein mentioned to the clerk of the court in which the action is pending.

SEC. 83. The affidavit and order of arrest shall be delivered to the sheriff, who upon arresting the defendant shall deliver to him a copy thereof.

SEC. 84. The sheriff shall execute the order by arresting the defendant, and keeping him in custody until discharged by law.

SEC. 85. The defendant at any time before execution, shall be discharged from the arrest, either upon giving bail, or upon depositing the amount mentioned in the order of arrest as provided in this act.

SEC. 86. The defendant may give bail, by causing a written undertaking to be executed in favor of the plaintiff by two or more sufficient sureties, stating their places of residence, to the effect that the defendant shall at all times render himself amenable to the process of the court, during the pendency of the action, and to such as may be issued to enforce the judgment therein, or if he be arrested for the cause mentioned in the fourth subdivision of section seventy-eight, an undertaking to the same effect as that provided by section one hundred and twelve.

SEC. 87. At any time before a failure to comply with the undertaking, the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested, in the following manner:

1. A certified copy of the bail shall be delivered to the sheriff, who shall detain the defendant in his custody thereon as upon an order of arrest, and shall by a certificate in writing acknowledge the surrender.

2. Upon the production of a copy of the undertaking and sheriff's certificate, a judge of the district court may upon a notice to the plaintiff of eight days, with a copy of the certificate, order that the bail be exonerated, and on filing the order and the papers used on said application, they shall be exonerated accordingly. But this section shall not apply to an arrest for cause mentioned in the fourth subdivision of section seventy-eight, so as to discharge the bail from an undertaking given to the effect provided by section one hundred and twelve.

Sec. 88. For the purpose of surrendering the defendant, the bail at any time and place, before they are finally charged, may themselves arrest him, or by a written authority, endorsed on a certified copy of the undertaking, may empower the sheriff or any other person of suitable age and discretion to do so.

Sec. 89. In case of the failure to comply with the undertaking, the bail may be proceeded against by action only.

Sec. 90. The bail may be exonerated either by the death of the defendant or his imprisonment in the penitentiary, or by his legal discharge from the obligation to render himself amenable to the process, or by his surrender to the sheriff of the county where he was arrested, in execution thereof, within twenty days after the commencement of the action against the bail, or within such further time as may be granted by the court.

Sec. 91. Within the time limited for that purpose, the sheriff shall file the order of arrest in the office of the clerk of the court in which the action is pending, with his return endorsed thereon, together with a certified copy of the undertaking of the bail; or if the defendant be arrested, and bail be not given, he shall file a certified copy of the order of arrest, with his return endorsed thereon. The plaintiff, within ten days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he shall be deemed to have accepted it, and the sheriff shall be exonerated from liability. If no notice be served within ten days, the original undertaking shall be filed with the clerk of the court.

Sec. 92. Within ten days after the receipt of notice, the sheriff or defendant may give to the plaintiff, or his attorney, notice of the justification of the same, or other bail (specifying the places of residence of the latter), before a judge of the district court, or the clerk of the court in which the action is pending, at a specified time and place, the time to be not less than five nor more than ten days thereafter, except by consent of parties. In case other bail be given, there shall be a new undertaking in the form prescribed in section eighty-six.

Sec. 93. The qualifications of bail shall be as follows:

1. Each of them shall be a resident of the territory; but no counselor or attorney at law, sheriff, clerk of the district court, or other officer of such court, shall be permitted to become bail in any action.

2. Each of them shall be worth the amount specified in the order of arrest, or the amount to which the order may be reduced as provided in this act, over and above all debts and liabilities, and exclusive of pro-

perty exempt from execution; but the judge or clerk of the court on justification may allow more than two sureties to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

Sec. 94. For the purpose of justification, each of the bail shall attend before the judge or clerk of the court, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency in such manner as the judge or clerk in his discretion may think proper. The examination shall be reduced to writing and subscribed by the bail, if required by the plaintiff.

Sec. 95. If the judge or clerk find the bail sufficient, he shall annex the examination to the undertaking, endorse his allowance thereon, and cause them to be filed with the clerk of the court in which the action is brought; and the sheriff shall thereupon be exonerated from liability.

Sec. 96. The defendant may at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. If the amount of the bail be reduced as provided in this act, the defendant may deposit such amount instead of giving bail. In either case, the sheriff shall give the defendant a certificate of the deposit made, and the defendant shall be discharged out of custody.

Sec. 97. The sheriff shall immediately after the deposit pay the same into court, and take from the clerk receiving the same two certificates of such payment, the one of which he shall deliver or transmit to the plaintiff or his attorney, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff to collect the sum deposited as in other cases of delinquency.

Sec. 98. If money be deposited, as provided in the last two sections, bail may be given and justified upon notice, as prescribed in section eighty-six, at any time before judgment, and on the filing of the undertaking and justification with the clerk, the money deposited shall be refunded by such clerk to the defendant.

Sec. 99. When money shall have been so deposited, if it remain on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk shall, under the direction of the court, apply the same in satisfaction thereof, and after satisfying the judgment shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall refund to him the whole sum deposited and remaining unapplied.

Sec. 100. If, after being arrested, the defendant escape or be rescued, the sheriff shall be liable as bail; but he may discharge himself from such liability by the giving and justification of bail at any time before judgment.

Sec. 101. If a judgment be recovered against the sheriff upon his liability as bail, and an execution thereon be returned unsatisfied, in whole or in part, the same proceedings may be had on his official bond for the recovery of the whole or any deficiency, as in other cases of delinquency.

Sec. 102. The bail upon the arrest shall, unless they justify, or other bail be given or justified, be liable to the sheriff by action for any damages which he may sustain by reason of such omission.

Sec. 103. The fees which shall be allowed to the sheriff for the food and maintenance of any defendant arrested under the provisions of this act shall be at the rate of one dollar and twenty-five cents per day for every day that the defendant shall remain in custody; and the plaintiff shall be liable in the first instance for such fees, and if required by the sheriff, shall pay the same weekly in advance; and such fees so paid shall be added to the costs taxed or accruing in the case, and be collected as other costs.

Sec. 104. If the plaintiff shall neglect to pay the fees mentioned in the last preceding section for three days after a demand of payment, the sheriff may discharge the defendant out of custody.

Sec. 105. A defendant arrested may, at any time before the justification of bail, apply to the judge who made the order, or the court in which the action is pending, upon reasonable notice to the plaintiff, to vacate the order of arrest, or reduce the amount of bail. If the application be made upon affidavits on part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs, in addition to those on which the order of arrest was made.

Sec. 106. If, upon such application, it shall satisfactorily appear that there was not sufficient cause for the arrest, the order shall be vacated; or if it satisfactorily appear that the bail was fixed too high, the amount shall be reduced.

Claim and delivery of personal property.

Sec. 107. The plaintiff in an action to recover the possession of personal property, may at the time of issuing the summons, or at any time before answer, claim the immediate delivery of such property as provided in this chapter.

Sec. 108. When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing:

1. That the plaintiff is the owner of the property claimed, (particularly describing it,) or is lawfully entitled to the possession thereof by virtue of a special property therein, the facts in respect to which, shall be set forth.

2. That the property is wrongfully detained by the defendant.

3. The alleged cause of the detention thereof, according to his best knowledge, information and belief.

4. That the same has not been taken for a tax, assessment or fine, pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff, or if so seized that it is by statute, exempt from such seizure; and,

5. The actual value of the property.

Sec. 109. The plaintiff may thereupon, by an endorsement in writing upon the affidavit, require the sheriff of the county where the property claimed may be, to take the same from the defendant and deliver it to the plaintiff.

Sec. 110. Upon the receipt of the affidavit and notice, with a written undertaking, executed by two or more sufficient sureties, approved by the sheriff, to the effect that they are bound in double the value of the property as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, notice and undertaknig, by delivering the same to him personally, if he can be found, or to his agent from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion; or, if neither have any known place of abode, by putting them in the post office, directed to the defendant at the post office nearest to him.

Sec. 111. The defendant may, within three days after the service of a copy of the affidavit and undertaking, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify on notice in like manner as upon bail on arrest. And the sheriff shall be responsible for the sufficiency of the sureties, until the objection to them is either waived, as above provided, or until they shall justify, or new sureties shall be substituted and justify. If the defendant except to the sureties, he cannot reclaim the property as provided in the next section.

Sec. 112. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, requir[illegible]e return thereof upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within three days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section one hundred and seventeen.

Sec. 113. The defendant's sureties, upon a notice to the plaintiff or his attorney of not less than two nor more than six days, shall justify before a judge of the district court, or the clerk of the court in which the action is pending, in the same manner as upon bail on arrest; upon such justification, the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until justification is completed or expressly waived, and may retain the property until that time; but if they or others in their place fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

Sec. 114. The qualification of sureties and their justification shall be as prescribed by sections ninety-three and ninety-four in respect to bail upon an order of arrest.

Sec. 115. If the property or any part thereof be concealed in a building or enclosure, the sheriff shall publicly demand its delivery. If it be not delivered, he shall cause the building or enclosure to be broken open, and take the property into his possession, and, if necessary, he may call to his aid the power of his county.

Sec. 116. When the sheriff shall have taken property, as in this chapter provided, he shall keep it in a secure place and deliver it to the party entitled thereto upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

SEC. 117. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or his right to the possession thereof, stating the grounds of such title or right, and serve the same upon the sheriff before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, shall indemnify the sheriff against such claim by an undertaking, executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and freeholders or householders of the county. And no claim to such property by any other person than the defendant or his agent shall be valid against the sheriff unless made as foresaid; and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

SEC. 118. The sheriff shall file the notice and affidavit, with his proceedings thereon, with the clerk of the court in which the action is pending within twenty days after taking the property mentioned therein; or, if the clerk reside in another county, shall mail or forward the same within that time.

Attachment.

SEC. 119. In an action for the recovery of money, the plaintiff, at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached in the manner hereinafter prescribed, as a security for the satisfaction of such judgment as he may recover.

SEC. 120. A writ of attachment shall be issued by the clerk of the court in which the action is brought whenever the plaintiff, his agent or attorney shall make affidavit that a cause of action exists against such defendant, specifying the amount of such claim over and above all legal set-offs, and the nature thereof, and that as the affiant verily believes the defendant is either,

1. A foreign corporation; or

2. That he is not a resident of this territory, or has departed therefrom with the intent to delay or defraud his creditors, or to avoid the service of a summons; or

3. That he has assigned, secreted, or disposed of, or is about to assign, secrete, or dispose of his property, or any part thereof, with the intent to delay or defraud his creditors; or

4. That the debt was fraudulently contracted.

SEC. 121. The affidavit required by the last section shall be attached to the writ upon issuing the same. Before executing such writ, the sheriff to whom it is directed shall require a written undertaking on the part of the plaintiff, with one or more sureties, in a sum not less than two hundred dollars nor exceeding the amount claimed by the plaintiff, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

Sec. 122. The writ shall be directed to the sheriff of any county in which property of such defendant may be, and shall require him to attach and safely keep all the property of such defendant within his county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, together with costs and expenses. Several writs may be issued at the same time to the sheriffs of different counties.

Sec. 123. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits thereon, all debts due such defendant, and all other property, real or personal, in this territory, of such defendant, not exempt from execution, may be attached, and if judgment be recovered against him, be sold or collected to satisfy the judgment and execution.

Sec. 124. The sheriff to whom the writ is directed and delivered shall execute the same without delay, as follows:

1. Real property shall be attached by leaving with the occupant thereof, or if there be no occupant, in a conspicuous place thereon, a copy of the writ and affidavit certified by the sheriff.

2. Personal property capable of manual delivery to the sheriff shall be attached by taking it into his custody.

3. Stock or shares, or interest in stock or shares of any corporation or company, shall be attached by leaving with the president or other head of the same, or the secretary, cashier, or managing agent thereof, a copy of the writ and affidavit, and a notice that the stock or interest of the defendant is attached in pursuance of such writ.

4. Debts and credits, and other personal property not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession or under his control such credits, or other personal property, a copy of the writ and affidavit, and a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession or under his control belonging to the defendant, are attached in pursuance of such writ.

The sheriff shall note on the writ the day, month and year when the attachment was made, and shall make a full inventory of the property attached, and return the same, together with the undertaking of the plaintiff, with the writ of attachment.

Sec. 125. If real estate be attached by virtue of any writ of attachment, the sheriff shall make a certified copy of said writ and of his return thereon, and deliver it within ten days from the time of making such attachment, to the recorder of the county in which such real estate is situated, who shall file and record the same in a book to be kept for that purpose in the recorder's office. When so filed within ten days the same shall be and continue a lien from the time of making the attachment, otherwise it shall be and continue a lien from the time it is filed on all real estate mentioned or described in the return of the sheriff in such county, until the same shall be discharged; and when the said lien shall be discharged by the order of the court in which the action is pending, or by satisfaction of the judgement rendered in the suit, it shall be the duty of the recorder, when requested, to record the satisfaction piece, or transcript of the record of such order, in a book to be kept for recording such liens, and he shall enter on the margin of the page or pages where the said writ and return are so recorded a minute of such discharge or satisfaction.

SEC. 126. All persons having in their possession or under their control any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ, affidavit and notice, as provided in section one hundred twenty-four, shall, unless such property be delivered up or transferred, or such debts be paid to the sheriff, be liable to the plaintiff for the amount of such credits, property or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

SEC. 127. When the sheriff, with a writ of attachment against the defendant, shall apply to any person mentioned in the third and fourth subdivisions of section one hundred and twenty-four, for the purpose of attaching the property mentioned therein, such person shall furnish him with a certificate designating the number of shares of the defendant in the stock of the corporation or company, with any dividend or incumbrance thereon, or the amount and description of the property or credits held by such corporation, company, or person for the defendant, or the debt owing to the defendant. If such person refuse to do so, or if his certificate or statement be unsatisfactory to the plaintiff, he may be required by an order of the court in which the action is brought, or a judge thereof, to attend before such court or judge and be examined on oath concerning the same, as hereinafter prescribed in this chapter; and disobedience to the order may be punished as a contempt.

SEC. 128. If any of the property attached be perishable, the sheriff shall sell the same in the manner in which property is sold on execution. The proceeds thereof, and other property attached, shall be retained by him to answer any judgment that may be recovered in the action, unless it be delivered as prescribed in the next section, or unless sooner subjected to execution upon another judgment, recovered previous to the issuing of the writ of attachment. Debts and credits attached may be collected by the sheriff, if the same can be done without suit, and his receipt shall be a sufficient discharge for the amount paid.

SEC. 129. The sheriff may deliver any of the property attached to the defendant, or to any other person claiming it and in whose possession it was attached, upon his giving a written undertaking therefor, executed by two or more sufficient sureties, engaging to redeliver it, or pay the value thereof to the sheriff, to whom execution upon a judgment obtained by the plaintiff in that action may be issued.

SEC. 130. If an action be brought upon such undertaking against the principal or his sureties, it shall be a defence that the property for which the undertaking was given, did not at the execution of the writ of attachment, belong to the defendant against whom it was issued.

SEC. 131. If any personal property attached, be claimed by a third person as his property, the sheriff may summon a jury to try the validity of such claim, and the same proceedings shall be had thereon with the like effect, as in case of seizure upon execution.

SEC. 132. Whenever the sheriff with a writ of attachment against the defendant, shall apply to any person mentioned in section one hundred and twenty-four, for the purpose of attaching the personal property therein mentioned, and such person shall deny that he has any personal property of the defendant, or shall refuse to give the certificate required in section one hundred and twenty-seven, or if such certificate be unsatisfactory to the plaintiff, he may be required by an order of the court in which the action is brought, or a judge thereof, to attend before such court, or judge at a time therein stated, not less than ten days thereafter and be examined on oath concerning the same.

Sec. 133. At any time after the allowance of such order, and before such person shall be required to attend, the plaintiff may exhibit written allegations and interrogatories touching the property, stock or credits of the defendant, in the possession of or held by such person as garnishee, or debts owning to the defendant by him, and such garnishee shall be required to make full, direct and true answers to the same on oath.

Sec. 134. On the day when the garnishee shall be required to attend before the court or judge he shall exhibit on oath his answer to the allegations and interrogatories of the plaintiff, unless for good cause shown a further time shall be allowed, in default of such answer the plaintiff may take judgment by default against him, or the court or judge may upon motion compel him to answer by attachment of his body.

Sec. 135. Such judgment by default may be proceeded on to final judgment in like manner as in actions against defendants, but no final judgment shall be rendered against the garnishee until there shall be final judgment against the defendant, and in no case for a greater amount than that sworn to by the plaintiff with interest and costs.

Sec. 136. The plaintiff may except to the answer of any garnishee for insufficiency, and if the same shall be adjudged insufficient, the court or judge may allow the garnishee to amend his answer, in such time and on such terms as shall be just, or the plaintiff may take judgment by default, or move the court or judge to attach the body of the garnishee to compel a sufficient answer.

Sec. 137. The plaintiff may deny the answer of the garnishee, in whole or in part, and the issues shall be tried as ordinary issues between plaintiff and defendant. If the answer be not excepted to or denied, in such time as the court or judge may deem proper it shall be taken to be true and sufficient.

Sec. 138. If by the answer not excepted to, nor denied, or if upon trial it shall appear that the garnishee is possessed of property or effects of the defendant, or is indebted to the defendant, the value of such property or effects, or if the debt, being ascertained, judgment may be rendered against the garnishee for the proper amount in money, and in such case the court may make him a reasonable allowance for his trouble in answering, to be paid out of the fund confessed in his hands.

Sec. 139. Whenever any property, effects money or debts belonging or owing to the defendant, shall be confessed or found by the court, judge or jury, to be in the possession of the garnishee, he may at any time before final judgment, discharge himself by delivering the same to the sheriff.

Sec. 140. Debts not yet due to the defendant may be attached but no execution shall be awarded against the garnishee for such debts until they shall become due.

Sec. 141. If all cases of controversy between the plaintiff and garnishee, the parties may be adjudged to pay or recover costs, as in ordinary cases between plaintiff and defendant.

SEC. 142. The defendant or claimant may be required to attend before the court, judge or jury, for the purpose of giving any necessary information respecting the property attached, and may be thereupon examined on oath concerning the same.

SEC. 143. If judgment be recovered by the plaintiff against the defendant in such action, the sheriff shall satisfy the same out of the property attached by him, if it be sufficient for that purpose:

1. By paying to the plaintiff the proceeds of all sales of perishable property sold by him or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment.

2. If any balance remain due, and an execution shall have been issued on the judgment, he shall sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands; and in case of the sale of any rights or shares in the stock of a corporation or company, the sheriff shall execute to the purchaser a certificate of the sale, and the purchaser shall thereupon have all the rights and privileges in respect thereto which were had by the defendant. Notices of the sales shall be given, and the sales conducted as in other cases of sales on execution.

SEC. 144. If, after selling all the property attached by him remaining in his hands and applying the proceeds to the payment of the judgment and costs, any balance shall remain due, the sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment and all the costs of the proceedings shall have been paid, the sheriff, upon reasonable demand, shall deliver over to the defendant the residue of the attached property, or the proceeds thereof.

SEC. 145. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales, and money collected by the sheriff, and all the property attached remaining in the sheriff's hands shall be delivered to the defendant or his agent, and the order of attachment shall be discharged.

SEC. 146. Whenever the defendant shall have appeared in the action, he may apply, upon reasonable notice to the plaintiff, to the court or judge for an order to discharge the attachment upon the execution of the undertaking mentioned in the next section; and if the application be granted, all the proceeds of sales, and moneys collected by the sheriff, and all the property attached remaining in his hands, shall be released from the attachment and delivered to the defendant.

SEC. 147. Upon such application the defendant shall deliver to the court or judge an undertaking executed by at least two sureties, approved by the court or judge, to the effect that the sureties will on demand pay to the plaintiff the amount of the judgment that may be recovered against the defendant in the action. The sureties may be required to justify on application to the court or judge, and the property attached shall not be released from the attachment without their justification, if it be required.

SEC. 148. The defendant may also, at any time before the time for answering expires, apply on motion to the court or judge to discharge the attachment on the ground that the writ was improperly issued.

SEC. 149. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence in addition to those on which the writ of attachment was issued. If upon such application it shall satisfactorily appear that such writ was improperly issued, it shall be discharged.

SEC. 150. When the writ of atttachment shall be fully executed or discharged, the sheriff shall return the same, with his proceedings thereon, to the court in which the action was brought.

CHAPTER 2.

Of the trial and judgment in actions at law—Issues and the mode of trial.

SEC. 1. Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party and controverted by the other. They are of two kinds:

1. Of law; and
2. Of fact.

SEC. 2. An issue of law arises upon a demurrer to the complaint, answer, or reply, or to some part thereof.

SEC. 3. An issue of fact arises,

1. Upon a material allegation in the complaint controverted by the answer; or
2. Upon new matter or a set-off controverted by the reply; or
3. Upon new matter in the reply.

SEC. 4. Issues, both of law and of fact may, arise upon different parts of the pleadings in the same action. In such cases the issues of law shall be first tried unless the court otherwise direct.

SEC. 5. An issue of law shall be tried by the court, unless referred upon consent as provided in section thirty-two in this chapter. An issue of fact shall be tried by a jury, unless a jury trial be waived, or a reference be ordered as provided in sections thirty-two and thirty-three of this chapter.

SEC. 6. A motion to postpone a trial on the ground of the absence of evidence, shall only be made upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it. The court may also require the moving party to state upon affidavit the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed.

Trial by jury.

SEC. 7. When the action is called for trial, the clerk shall prepare separate ballots, containing the names of the jurors summoned who have appeared and not been excused, and deposit them in a box. He shall then draw from the box twelve names, and the persons whose names are drawn shall constitute the jury. If the ballots become exhausted before the jury is complete, or if from any cause a juror or jurors be excused or discharged, the sheriff, under the direction of the court, shall summon from the bystanders or citizens of the county so many qualified persons as may be necessary to complete the jury. The jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number not less than three, and such consent shall be entered by the clerk on the minutes of the trial.

Sec. 8. Either party may challenge the jurors, but when there are several parties on either side, they shall join in a challenge before it can be made. The challenges shall be to individual jurors, and shall be peremptory, or for cause. Each party shall be entitled to three peremptory challenges.

Sec. 9. Challenges for cause may be taken on one or more of the following grounds:

1. A want of any of the qualifications prescribed by statute to render a person competent as a juror;

2. Consanguinity or affinity within the third degree to either party;

3. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party; or being a member of the family of either party; or a partner in business with either party; or being security on any undertaking or obligation for either party;

4. Having served as a juror, or been a witness on a previous trial between the same parties for the same cause of action;

5. Interest on the part of the juror in the event of the action, or in the main question involved in the action;

6. Having formed or expressed an unqualified opinion or belief as to the merits of the action;

7. The existence of a state of mind in the juror evincing enmity against either party.

Sec. 10. Challenges for cause shall be tried by the court. The juror challenged, and any other person as a witness, may be examined on the trial of the challenge.

Sec. 11. As soon as the jury is completed, an oath or affirmation shall be administered to the jurors in substance that they, each of them, will well and truly try the matter in issue between the plaintiff and the defendant, and a true verdict give according to the evidence.

Sec. 12. When the jury is completed and sworn, the ballots containing the names of the jurors sworn shall be laid aside till the jury so sworn is discharged, and then they shall be returned to the box; and every ballot drawn containing the name of a juror not so sworn shall be returned to the box as soon as the jury is completed.

Sec. 13. The jurors may be kept together in charge of a proper officer, or may, in the discretion of the court, at any time before the submission of the cause to the jury, be permitted to separate; in either case they may be admonished by the court that it is their duty not to converse with any other person, or among themselves, on any subject connected with the trial, or to express any opinion thereon until the case is finally submitted to them.

Sec. 14. If, after the impanneling of the jury, and before a verdict, a juror become sick so as to be unable to perform his duty, the court may order him to be discharged. In that case, unless the parties agree to proceed with the other jurors, a new juror may be sworn and the trial begin anew; or the jury may be discharged, and a new jury then or afterwards impanneled.

Sec. 15. After hearing the charge of the court, the jury may either decide in the court room or retire for deliberation. If they retire, they shall be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict or are discharged. The officer shall, to the utmost of his ability, keep the jury together, separate from other persons; he shall not suffer any communication to be made to them, or make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict; and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

Sec. 16. Upon retiring for deliberation, the jury may take with them the pleadings in the cause, and all papers (except depositions) which have been received as evidence on the trial, or copies of such parts of public records or private documents given in evidence as ought not in the opinion of the court to be taken from the person having them in possession. They may also take with them notes of the testimony or other proceedings on the trial taken by themselves, or any of them; bnt none taken by any other person, except by consent of the parties.

Sec. 17. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court, the information required shall be given in the presence of, or after notice to the parties or counsel.

The verdict.

Sec. 18. The verdict of a jury is either general or special. A general verdict is that by which the jury pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury find the facts only, leaving the judgment to the court.

Sec. 19. In an action for the recovery of specific personal property, if the property have not been delivered to the plaintiff, or the defendant by his answer claim a return thereof, the jury shall assess the value of the property, if their verdict be in favor of the plaintiff, or if they find in favor of the defendant, and that he is entitled to a return thereof, and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention, or taking and withholding such property.

Sec. 20. In every action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict in writing upon all or any of the issues; and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding shall be filed with the clerk and entered upon the minutes.

SEC. 21. When a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

SEC. 22. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a set-off for the recovery of money is established beyond the amount of the plaintiff's claim as established, the jury shall also assess the amount of recovery; they may also, under the direction of the court, assess the amount of the recovery when the court give judgment for the plaintiff on the answer.

SEC. 23. If the verdict be informal, it may be corrected by the jury under the advice of the court, or the jury may be again sent out. When rendered, the verdict shall be entered by the clerk on his minutes.

Trial by the court.

SEC. 24. Trial by jury may be waived by the several parties to an issue of fact, in actions on contract, and with the assent of the court in other actions, in the manner following:

1. By failing to appear at the trial;
2. By written consent, in person, or by attorney, filed with the clerk;
3. By oral consent in open court, entered in the minutes.

SEC. 25. Upon the trial of an issue of fact by the court, its decision shall be given in writing and filed with the clerk within twenty days after the court at which the trial took place. In giving the decision, the facts found, and the conclusions of law shall be separately stated. Judgment upon the decision shall be entered accordingly.

Trial by referees.

SEC. 26. All or any of the issues in the action, whether of fact or law, or both, may be referred upon the written consent of the parties.

SEC. 27. When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in the following cases:

1. When the trial of an issue of fact shall require the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or to report upon any specific question of fact involved therein; or
2. When the taking of an account shall be neccessary for the information of the court, before judgment upon an issue at law, or for carrying a judgment or order into effect; or
3. When a question of fact, other than upon the pleadings, shall arise, upon motion or otherwise, in any stage of the action; or
4. When it is necessary for the information of the court in a special proceeding.

SEC. 28. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the court or judge may appoint one or more, not exceeding three, who reside in the county in which the action is brought or the proceeding is triable.

Sec. 29. When the appointment of referees is made by the court or judge, each referee shall be:

1. Qualified as a juror as provided by statute;
2. Competent as a juror between the parties.

Sec. 30. The trial by referees shall be conducted in the same manner as a trial by the court. They shall have the same power to administer oaths to witnesses and to grant adjournments as the court upon such trial. They shall state the facts found, and the conclusions of law separately, and their decision shall be given, and may be excepted to and reviewed in like manner. The report of the referees upon the whole issue shall stand as the decision of the court, and judgment may be entered thereon in the same manner as if the action had been tried by the court. When the reference is to report the facts, the report shall have the effect of a special verdict.

Exceptions.

Sec. 31. An exception is an objection taken at the trial to a decision upon matter of law, whether such trial be by jury, court, or referees, and whether the decision be made during the formation of a jury, or in the admission of evidence, or in the charge to the jury, or at any other time from the calling of the action for trial to the rendering of the verdict or decision. But no exception shall be regarded on a motion for a new trial, or on an appeal, unless the exception be material, and affect the substantial rights of the parties.

Sec. 32. The point of the exception shall be particularly stated, and may be delivered in writing to the judge, or entered in his minutes, and at the time be corrected until made conformable to the truth, or it may afterwards be settled in a statement of the case as prescribed in section forty-four of this chapter.

Sec. 33. No particular form of exception shall be required. The objection shall be stated, with so much of the evidence or other matter as is necessary to explain it, but no more.

Sec. 34. When a cause has been tried by the court, or by referees, and the decision or report is not made immediately after the closing of the testimony, the decision or report shall be deemed excepted to on a motion for a new trial, or on appeal, without any special notice that an exception is taken thereto.

New trial.

Sec. 35. A new trial is a re-examination of an issue of fact in the same court after a trial and decision by a jury, court, or referees.

Sec. 36. The former verdict or other decision may be vacated and a new trial granted on the application of the party aggrieved for any of the following causes, materially affecting the substantial rights of such party:

1. Irregularty in the proceedings of the court, jury, or adverse party, or any order of the court, or abuse of discretion by which such party was prevented from having a fair trial;

2. Misconduct of the jury or prevailing party;

3. Accident or surprise which ordinary prudence could not have guarded against;

4. Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial;

5. Excessive damages, appearing to have been given under the influence of passion or prejudice;

6. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law;

7. Error in law occurring at the trial, and excepted to by the party making the application.

SEC. 37. When the application is made for a cause mentioned in the first, second, third and fourth subdivisions of the last section, it shall be upon affidavit setting forth the facts upon which such application is based, which affidavit shall be filed within four days after the verdict or other decision is given. For any other cause it shall be made upon a statement prepared as provided in the next section.

SEC. 38. The party intending to move for a new trial for a cause mentioned in the fifth, sixth and seventh subdivisions of section forty-two, shall give oral or written notice of the same within one day after the verdict or other decision is given, and shall within four days after such verdict or other decision, prepare and file a statement of the grounds upon which he intends to rely. The adverse party may propose amendments to such statement within four days thereafter; if no amendment be proposed it shall be adopted, if proposed the statement and amendments may be submitted for settlement to the judge or referee, before whom the trial was had, upon a notice of four days, to the adverse party, his agent or attorney. If such notice be not served within four days after the amendments are proposed, they shall be adopted.

SEC. 39. On the argument of a motion for a new trial, reference may also be had to the pleadings, depositions and documentary evidence on file, and to the minutes of the court. If the application be made upon affidavits filed, the adverse party may use counter affidavits on the hearing; but such counter affidavits shall be filed with the clerk at least one day previous to the hearing.

General provisions.

SEC. 40. Any party may, and if required by the court shall, when the evidence is closed, submit in distinct and concise propositions the conclusions of fact which he claims to be established, or the conclusions of law which he desires to be adjudged, or both. They may be written and handed to the court, or at the option of the court, oral, and entered in the judge's minutes; but in either case they shall be entered with any exceptions that may be taken by either party.

SEC. 41. The provisions of this chapter respecting trials by jury shall be applied, so far as they are in their nature applicable, to trials by the court or referees, and in the same manner the provisions respecting trials by the court shall apply to trials by referees.

Judgment in general.

SEC. 42. A judgment is the final determination of the rights of the parties in the action.

SEC. 43. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between themselves.

SEC. 44. In an action against several defendants the court may, in its discretion render judgment against one or more of them, whenever a several judgment is proper, leaving the action to proceed against the others.

SEC. 45. An action may be dismissed, or a judgment of non-suit entered in the following cases:

1. By the plaintiff himself, at any time before trial, unless set-off be interposed as a defense. If a provisional remedy has been allowed the undertaking shall thereupon be delivered by the clerk to the defendant, who may have his action thereon;
2. By either party, upon the written consent of the other;
3. By the court, when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal;
4. By the court, when upon the trial and before the final submission of the case, the plaintiff abandons it;
5. By the court upon motion of the defendant, when upon the trial the plaintiff fails to prove a sufficient cause for the jury.

SEC. 46. In every case, other than those mentioned in the last section, the judgment shall be rendered on the merits.

Judgment upon failure to answer.

SEC. 47. Judgment may be had on proof of the service of the summons and complaint, if the defendant fail to answer the complaint, as follows:

1. In an action arising upon contract for the recovery of money only, if no answer be filed with the clerk of the court within the time prescribed by law, or such further time as may have been granted, the court upon the application of the plaintiff, shall direct the clerk to enter the default of the defendant, and immediately thereafter enter judgment for the amount mentioned in the summons, including the costs against the defendant, or against one or more of several defendants in the cases provided for in section thirty-four of the last chapter.
2. In other actions, if no answer be filed with the clerk of the court within the time prescribed by law, or such further time as may have been granted the court shall in like manner, direct the clerk to enter the default of the defendant, and thereafter the plaintiff may apply at that, or any subsequent term of the court for the relief demanded in the complaint. If the taking of an account or the proof of any fact be necessary

to enable the court to give judgment or to carry the judgment into effect, the court may take the account or hear the proof, or may in its discretion, order a reference for that purpose. And when the action is for the recovery of damages only or of specific real or personal property, with damages for the witholding thereof, the court may order the damages to be assessed by a jury, or if to determine the amount of damages, the examination of a long account be necessary, by a reference as above provided;

3. In actions when the service of the summons shall be by publication, the plaintiff may in like manner, apply for judgment, and the court shall thereupon require proof to be made of the demand, mentioned in the complaint, and if the defendant be not a resident of the territory, shall require the plaintiff or his agent, to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use on account of such demand, and may render judgment for the amount which he is entitled to recover. Before rendering judgment the court may in its discretion, require the plaintiff to cause to be filed, satisfactory security to abide the order of the court, touching the restitution of any property collected or received under the judgment, in case the defendant or his representatives shall be admitted to defend the action, and succeed in the defense.

4. The court may in its discretion, before final judgment, set aside any default upon affidavit showing good and sufficient cause, and upon such terms as may be deemed reasonable.

Judgment by confession.

Sec. 48. Any defendant in an action pending in the district coun may personally appear before the clerk of such court, either in ter time or in vacation, and with the assent of the plaintiff, or his attorney confess judgment for the amount admitted to be due, whereupon judgment shall be entered accordingly by the clerk.

Sec. 49. A judgment by confession may also be entered witho action, in term time or in vacation, either for money due, or to becom due, or to secure any person against contingent liability on behalf the defendant, or both, in the manner prescribed in the next t sections.

Sec. 50. A statement in writing shall be made, signed by the defendant, and verified by his oath, to the following effect:

1. It shall authorize the entry of judgment for a particular sum;

2. If it be for money due, or to become due, it shall state concis the facts out of which it arose, and shall show that the sum confess is justly due, or to become due;

3. If it be for the purpose of securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liabili and shall show that the sum confessed therefor does not exceed same.

Sec. 51. The statement shall be filed with the clerk of the distri court in which the judgment is to be entered, who shall endorse upon and enter in the judgment book a judgment for the amount confessed with five dollars costs. The statement and affidavit, with the judgment endorsed, shall thereupon become the judgment roll.

SEC. 52. Executions may be issued on judgments by confession, as in other cases; and when such judgment is payable in instalments, the execution may issue for such instalments as have become due, with interest thereon and the costs of judgment; and whenever any other instalments become due, execution may in like manner be issued for the collection and enforcement of the same.

Submitting a controversy without action.

SEC. 53. Parties to a question in difference, which might be the subject of an action at law, may without action agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceedings in good faith, to determine the rights of the parties; the court shall thereupon hear and determine the case and render judgment thereon as if an action were depending.

SEC. 54. Judgment shall be entered in the judgment book as in other cases, but without costs for any proceeding prior to the trial. The case, the submission, and a copy of the judgment, shall constitute the judgment roll.

SEC. 55. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall in the same manner be subject to appeal.

The manner of giving and entering judgment.

SEC. 56. When a trial by jury has been had, judgment shall be entered by the clerk, in conformity to the verdict, within four days after the rendition thereof, unless an affidavit or statement of grounds for a new trial shall be filed, or unless the court order the case to be reserved for argument or further consideration, or grant a stay of proceedings.

SEC. 57. When the case is reserved for argument or further consideration, as mentioned in the last section, it may be brought by either party before the court for argument at the first special term thereafter.

SEC. 58. If a set-off established at the trial exceed the plaintiff's demand, so established, judgment for the defendant shall be given for the excess; or if it appear that the defendant is entitled to any other affirmative relief, judgment shall be given accordingly.

SEC. 59. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or the value thereof, in case a delivery cannot be had, and damages for the detention. If the property have been delivered to the plaintiff and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof, in case a return cannot be had, and damages for taking and witholding the same.

SEC. 60. The clerk shall keep among the records of the court a book for the entry of judgments, to be called the "judgment book," in which each judgment shall be entered, and shall specify clearly the relief granted, or other determination of the action.

SEC. 61. Immediately after entering the judgment the clerk shall attach together, and file the following papers, which shall constitute the judgment roll:

1. In case the complaint be not answered by any defendant, the summons and complaint, or copies thereof, with the proof of service, and a memorandum, endorsed on the complaint, that the default of the defendant in not answering was entered, and a copy of the judgment;

2. In all other cases, the summons, pleadings or copies thereof, and a copy of the judgment, with any verdict or report, the offer of the defendant, bill of exceptions, and all orders relating to a change of parties or in any way involving the merits and necessarily affecting the judgment.

SEC. 62. On filing a judgment roll, judgment shall be docketed by the clerk of the court in the county where it shall be rendered, and in any other county upon filing with the clerk of the district court of such county, a transcript of the original docket, and thereupon it shall become a lien on all the real property of the judgment debtor, not exempt from execution in any county, where it shall be docketed, such lien shall extend to all the real property of the judgment debtor, owned by him at the time of docketing the judgment or which he may afterwards acquire until the lien expires, such lien shall continue for five years from the time of the rendition of the judgment, unless it be previously satisfied.

SEC. 63. The docket mentioned in the last section is a book which the clerk shall keep in his office, to be called the "judgment lien docket" with each page divided into eight columns, and headed as follows: Judgment debtors; judgment creditors; amount of judgment; time of entry when entered in judgment book; appeals when taken; judgment of appellate court; satisfaction when entered. The names of the judgment debtors shall be entered in the docket in alphabetical order.

SEC. 64. Satisfaction of a judgment shall be entered by the clerk in the judgment lien docket, when an execution shall be returned satisfied, or upon an acknowledgment of satisfaction filed with the clerk made in the manner of an acknowledgment of a conveyance of real property, or made in the presence of the clerk, or within two years after the judgment by the attorney of record, unless a revocation of his authority be previously filed. Whenever a judgment shall be satisfied in fact otherwise than upon an execution, it shall be the duty of the party or attorney to give such acknowledgment, and upon motion the court may compel it, or may order the entry of satisfaction to be made without it.

CHAPTER 3.

The execution.

SEC. 1. The party, in whose favor judgment is given, may at any time within five years after the entry thereof, issue a writ of execution for its enforcement as prescribed by statute.

SEC. 2. After the lapse of five years from the entry of judgment, an execution can be issued only by leave of the court, upon motion, with personal notice to the adverse party, unless he be absent or non-resident or cannot be found to make such service, in which case such service may be made by publication, or in such other manner as the court shall direct. Such leave shall not be given, unless it be established by the oath of the party or other satisfactory proof that the judgment or some part thereof remains unsatisfied and due. When the judgment shall have been rendered in a justices court, and docketed in the office of the clerk of the district court, such application for leave to issue an execution shall be to the district court of the county where the judgment was rendered.

SEC. 3. When a judgment requires the payment of money or the delivery of real or personal property, the same may be enforced in those respects by execution, as provided in this chapter. When it requires the performance of any other act, a certified copy of the judgment may be served on the party, against whom it is given, or the person or officer who is required thereby or by law to obey the same, and his obedience thereto enforced. If he refuse he may be punished by the court as for a contempt.

SEC. 4. There shall be three kinds of executions: one against the property of the judgment debtor; another against his person; and the third for the delivery of the possession of real or personal property, or such delivery with damages for witholding the same.

SEC. 5. The writ of execution shall be issued in the name of the United States, sealed with the seal of the court, and subscribed by the clerk, and shall be directed to the sheriff, or coroner when the sheriff is a party or interested, and shall intelligibly refer to the judgment, stating the court, the county where the judgment roll is filed, the names of the parties, the amount of the judgment if it be for money, and the amount actually due thereon, and shall require the sheriff substantially as follows:

1. If it be against the property of the judgment debtor, it shall require the sheriff to satisfy the judgment with interest, out of the personal property of such debtor, and if sufficient personal property cannot be found, out of the real property belonging to him on the day when the judgment was docketed in the county, or at any time thereafter;

2. If it be against real or personal property, in the hands of personal representatives, heirs, devisees, legatees, tenants of real property or trustees, it shall require the sheriff to satisfy the judgment with interest out of such property;

3. If it be against the person of the judgment debtor, it shall require the sheriff to arrest such debtor and commit him to the jail of the county until he shall pay the judgment with interest, or be discharged according to law;

4. If it be for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the sheriff to satisfy any costs, charges, damages or rents and profits recovered by the same judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered to be specified therein,

if a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of the real property belonging to him on the day when the judgment was docketed in the county, or at any time thereafter.

Sec. 6. When the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county in this territory.—*When it requires the delivery of real or personal property, it shall be* issued to the sheriff of the county where the property or some part thereof is situated. Executions may be issued at the same time to different counties.

Sec. 7. The sheriff shall endorse upon a writ of execution, the time when he received the same, and such execution shall be returnable, within sixty days after its receipt by the sheriff to the clerk with whom the judgment roll is filed.

Sec. 8. If the action be one in which the defendant might have been arrested as provided by statute, an execution against the person of the judgment debtor, may be issued to any county within the jurisdiction of the court, after the return of the execution against his property, unsatisfied in whole or in part.

Sec. 9. A person arrested on execution shall be imprisoned within the jail or the liberties thereof, and kept at his own expense until satisfaction of the execution, or his legal discharge, but the plaintiff shall be liable to the sheriff in the first instance for such expense as in other cases of arrest, in the same manner and to the same extent as prescribed in sections 103 and 104 of chapter one.

Sec. 10. All property real and personal of the judgment debtor, not exempt by law, and which is liable to an attachment, shall be liable to execution. Until a levy, property shall not be affected by the execution.

Sec. 11. The following property shall be exempt from execution, *except as herein otherwise specially provided:*

1. All wearing apparel of every person or family;
2. The miscellaneous library and school books of every individual and family, not exceeding in value one hundred and fifty dollars, and all family pictures;
3. To each household, ten sheep with their fleeces and the yarn or cloth manufactured therefrom, two cows, five swine, and provision and fuel for the comfortable subsistence of such householder and family for six months;
4. To each householder all household goods, furniture and utensils, not exceeding in value three hundred dollars;
5. The tools, implements, material, stock, apparatus, team, vehicle, horses, harness, library or other things, to enable any person to carry on the profession, trade, occupation or business in which such person may be wholly or principally engaged, not exceeding in value four hundred dollars; the word team in this sub-division shall be constructed to mean either one yoke of oxen, or a pair of horses or mules, as the case may be;
6. A sufficient quantity of hay, grain and feed for keeping for three months, the animals mentioned in the several sub-divisions of this section as exempted from execution. But no article of property mentioned in this section shall be exempt from an execution issued on a judgment, recovered for its price, or upon a mortgage thereon.

SEC. 12. When personal property shall be seized by virtue of any execution, and any person other than the defendant, shall claim such property or any part thereof, and shall give notice thereof in writing, the sheriff may summon from his county six persons, qualified as jurors between the parties, to try the validity of the claim, giving five days notice of the time and place of the trial to the plaintiff in the execution or his attorney.

SEC. 13. The sheriff at the request of either party, shall summon witnesses and compel them to attend and give testimony, and he shall administer the necessary oaths to the jurors and witnesses. On the trial the defendant and the claimant may be examined by the plaintiff as witnesses, and the verdict of such jury being rendered in writing, and signed by the foreman, shall be a full indemnity to the sheriff, proceeding in accordance therewith.

SEC. 14. The sheriff, jury and witnesses shall be allowed the like fees, as for similar cases in the district court, and shall be paid by the claimant if the verdict is against him, otherwise by the plaintiff, and the sheriff may levy all such costs, upon the goods and chattels of the party made liable to pay them, as on execution.

SEC. 15. If at any time before the jury return the claimant withdraw his claim, the trial shall proceed no further, and the claimant shall pay the costs of such unfinished trial.

SEC. 16. Notwithstanding the verdict of the jury be for the claimant, yet the sheriff shall proceed to sell the property seized in satisfaction of the execution, if the plaintiff tender to him a written undertaking, executed by two or more good and sufficient sureties, residents of the county, in double the value of the property, to the effect that he will indemnify the sheriff against all damages and costs, which he may sustain in consequence of the seizure and sale of such property, and moreover, that he will pay to any person or persons claiming title to such property, all damages which he or they may sustain in consequence of such seizure and sale.

SEC. 17. If such undertaking be given, it shall be returned by the sheriff, together with the execution and filed with the clerk who issued the execution, and the claimant may prosecute his suit upon such undertaking, and recover such damages as a jury may assess.

SEC. 18. Before the sale of property on execution, notice thereof shall be given as follows:

1. In case of personal property, by posting written or printed notice of the time and place of sale, in three public places of the county where the sale is to take place, not less than ten days successively;

2. In case of real property, by posting a similar notice, particularly describing the property, for four weeks successively, in three public places of the county, where the property is situated, and also where the property is to be sold, and publishing a copy thereof once a week for the same period in a newspaper of the county, if there be one, or if there be none, then in a newspaper published nearest to the place of sale.

SEC. 19. Any officer selling without the notice prescribed by the last section, shall forfeit one hunered dollars to the party aggrieved, in addition to his actual damages, and a person wilfully taking down, or defacing the notice posted, if done before the sale or satisfaction of the execution, and without the consent of the parties, shall forfeit fifty dollars to the party aggrieved, but the validity of the sale shall not be affected by either act.

SEC. 20. All sales of property under execution shall be made by auction, between nine o'clock in the morning and sunset, after sufficient property has been sold to satisfy the execution no more shall be sold; neither the officer holding the execution, nor his deputy shall become a purchaser or be interested in any purchase at such sale, when the sale is of personal property capable of manual delivery, it shall be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price, and when the sale is of real property, and consisting of several known lots or parcels, they shall be sold separately, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be thus sold. Sales of real property shall be made on the premises if occupied by the defendant or any person holding under him, otherwise such sales shall be made at the court house door.

SEC. 21. When the sheriff shall levy upon personal property by virtue of an execution, he may permit the defendant to retain the same, or any part thereof in his possession until the day of sale, upon the defendant executing a written undertaking to the sheriff with sufficient surety, in double the value of such property, to the effect that it shall be delivered to the sheriff at the time and place of sale, and for non-delivery thereof, an action may be maintained upon such undertaking by the sheriff or the plaintiff in the execution.

SEC. 22. If at the time appointed for the sale, the sheriff should be prevented from attending at the place appointed, or being present should deem it for the advantage of all concerned, to postpone the sale for want of purchasers, or other sufficient cause, he may postpone the sale not exceeding one week, next after the day appointed, and so from time to time for the like cause, giving notice of every adjournment by public proclamation, made at the same time.

SEC. 23. When the purchaser of any personal property capable of manual delivery, shall pay the purchase money, the sheriff shall deliver to him the property, and if desired shall give him a certificate of the sale and payment. When such personal property shall not be capable of manual delivery, the sheriff shall execute and deliver to the purchaser a certificate of sale and payment.

SEC. 24. Upon a sale of real property, when the estate is less than a leasehold of two years unexpired term, the sale shall be absolute. In all other cases the real property shall be subject to redemption, as provided in this chapter. The sheriff shall give to the purchaser a certificate of the sale, containing:

1. A particular description of the property sold;
2. The price bid for each distinct lot or parcel;
3. The whole price paid;
4. When subject to redemption, it shall be so stated, a duplicate of which certificate shall be filed by the sheriff with the recorder of deeds of the county.

SEC. 25. Property sold subject to redemption, as provided in the last section, or any part sold separately may be redeemed in the manner hereinafter provided by the following persons or their successors in interest:

1. The judgment debtor, or his successor in interest, in the whole, or any part of the property;

2. A creditor having a lien by judgment, mortgage or otherwise in the property sold, or on some share or part thereof, subsequent to that on which the property was sold.

The persons mentioned in the second subdivision of this section, after having redeemed the property, are termed redemptioners.

Sec. 26. The judgment debtor or lien creditor may redeem the property from the purchaser within three months after the day of sale, on paying him the amount of his purchase with ten per cent. thereon in addition, together with the amount of any taxes which the purchaser may have paid thereon after the purchase, and if the purchaser be also a creditor, having a lien prior to that of the redemptioner, the amount of such lien with interest.

Sec. 27. If the property be so redeemed by a redemptioner, either the judgment debtor or any other lien creditor may within sixty days after the last redemption, again redeem it on paying the sum paid on the last redemption with interest, and the amount of taxes which the last redemptioner may have paid thereon, and unless his lien be prior to that of such last redemptioner, the amount of such lien with interest. The property may be again, and as often as the judgment debtor, or any lien creditor or redemptioner is disposed, redeemed from the last previous redemptioner, within sixty days after the last redemption, on paying the sum paid on the last previous redemption, with interest, and the amount of any taxes paid thereon by such last redemptioner, and the amount of any liens held by such last redemptioner, prior to his own, with interest. Notice of redemption shall in all cases be given to the sheriff.

Sec. 28. If no redemption be made within three months after the sale, the purchaser shall be entitled to a conveyance; or if so redeemed, whenever sixty days shall have elapsed, and no other redemption has been made, and notice thereof given, the time for redemption shall have expired, and the last redemptioner shall be entitled to a sheriff's deed. If the judgment debtor redeem, at any time before the time for redemption expires, the effects of the sale shall be terminated, and he be restored to his estate.

Sec. 29. The payment for the redemption of property may be made to the purchaser or redemptioner, as the case may be, or for him to the officer who made the sale; and the tender of the money shall be equivalent to payment.

Sec. 30. A lien creditor, seeking to redeem property, shall produce to the officer or person from whom he seeks to redeem, and serve with his notice to the sheriff:

1. A copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court of the county where the judgment is docketed; if he redeem upon a mortgage or other lien, a note of the record thereof, certified by the recorder;

2. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto; and

3. An affidavit by himself, or his agent, showing the amount then actually due on the lien.

Sec. 31. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or judgment creditor, but it shall not be deemed waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make the necessary repairs to buildings thereon; or to use wood or timber on the property therefor; or for the repair of fences; or for fuel in his family while he occupies the property.

SEC. 32. The purchaser from the time of sale until a redemption, and a redemptioner from the time of his redemption until another redemption, shall be entitled to receive from the tenant in possession the rents of the property sold, or the value of the use and occupation thereof.

SEC. 33. If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of irregularity in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid with interest, from the judgment creditor. If the recovery be in consequence of the irregularity in the proceedings concerning the sale, the judgment may, by order of the court, upon notice to the debtor, be revived, and a new execution issued for the price paid on the sale with interest. Such judgment shall be a lien on the real estate of a judgment debtor, only from the time of its revival.

SEC. 34. When property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is levied upon the property of one of them, or one of them pays without a sale, more than his proportion, he may compel contributions from the others; and when a judgment is against several, and is upon an obligation or contract of one of them as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal. In such cases, the person so paying or contributing shall be entitled to the benefit of the judgment to enforce contribution or repayment, if within thirty days after his payment, he file with the clerk of the court where the judgment was rendered, notice of his payment and claim to contribution or repayment; upon filing such notice, the clerk shall make an entry thereof in the margin of the docket where the judgment is entered.

Proceedings supplementary to the execution.

SEC. 35. After the issuing of an execution against property, and [illegible] on proof by affidavit of a party, or otherwise, to the [illegible] district court, or any judge thereof, that the judgment debtor has any property which he unjustly refuses to apply towards the satisfaction of the judgment, such [illegible] to appear and answer [illegible] concerning [illegible] on oath concerning his property, and his answers reduced to writing, and filed with the clerk of the court, by whom the execution was issued. Either party may also examine witnesses in his behalf, and if during such examination, any property, rights or credits of such judgment debtor, not exempt by law be discovered, they may be levied upon by execution.

SEC. 37. Instead of the order requiring the attendance of the judgment debtor, as provided in the last two sections, the court or judge may, upon proof by affidavit of a party or otherwise, to his satisfaction, that there is danger of the debtor leaving the territory, or concealing himself, and that there is reason to believe he has property which he unjustly refuses to apply to such judgment, issue a warrant requiring the sheriff of any county where such debtor may be, to arrest him and bring him before the court, or judge; upon being brought before the court or judge, he may be examined on oath, and if it then appear that there is danger of the debtor leaving the territory, and that he has property which he has unjustly refused to apply to such judmengt, he may be ordered to enter into an undertaking with one or more sureties, that he will from time to time attend before the court or judge as may be directed, and that he will not, during the pendency of the proceedings, dispose of any portion of his property not exempt from execution. In default of entering into such undertaking, he may be committed to prison by warrant of the judge.

SEC. 38. After the issuing of execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid.

SEC. 39. After the issuing or return of an execution against property of a judgment debtor, or of any one of several debtors in the same judgment, and upon an affidavit that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding twenty-five dollars, the district court, or any judge thereof may by an order require such person or corporation, or any officer or member thereof to appear at a specified time and place, before such court or judge, or a referee appointed by such court or judge, and answer concerning the same. If before a referee, the examination shall be taken by the referee and certified to the court or judge. The court or judge may, also, in their discretion, require notice of such proceeding to be given to any party to the action in such manner as may seem to him proper.

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Sec. 42. Such judgment by default may be proceeded on to final judgment in like manner as actions against defendants, but no final judgment shall be rendered against the garnishee for a greater amount than that specified in the execution.

Sec. 43. The judgment creditor may except to the answer of any garnishee for insufficiency, and if the same shall be judged insufficient, the court or judge may allow the garnishee to amend his answer in such time and upon such terms as shall be just, or the judgment creditor may take judgment by default, or move the court or judge to attach the body of the garnishee to compel a sufficient answer.

Sec. 44. The judgment creditor may deny the answer of the garnishee in whole or in part, and the issue shall be tried as ordinary issues between plaintiff and defendant. If the answer of the garnishee be excepted to or denied in such time as the court or judge may deem proper, it shall be taken to be true and sufficient.

Sec. 45. If by the answer not excepted to nor denied, or if upon trial it shall appear that the garnishee is possessed of property or effects of the judgment debtor, or is indebted to him, the value of such property or effects, or of the debt, being ascertained, judgment may be rendered against the garnishee for the proper amount in money, but if such debt be not yet due, execution shall not be awarded against the garnishee until it becomes due; and in such cases the court may make him a reasonable allowance for his trouble in answering, to be paid out of the fund in his hands.

Sec. 46. Whenever any property, effects, money or debts belonging or owing to the judgment debtor, shall be confessed or found by the court, judge, referee or jury, to be in the possession of the garnishee, he may at any time before final judgment, discharge himself by delivering the same to the sheriff.

Sec. 47. The judgment debtor or claimant may be required to attend before the court, judge or jury, for the purpose of giving any necessary information respecting the property or effects alledged to be in the possession of the garnishee, and may be thereupon examined on oath concerning the same.

Sec. 48. In all cases of controversy between the judgment creditor and garnishee, the parties may be adjudged to pay or recover costs as in ordinary cases between plaintiff and defendant.

Sec. 49. Execution may be issued to collect any judgment rendered against a garnishee, as in ordinary cases of judgment against defendants.

Sec. 50. The earnings of a judgment debtor for personal services, at any time within sixty days next preceding the judgment against a garnishee, shall not be included in such judgment, when it shall be made to appear by the affidavit of the judgment debtor, or otherwise, that such earnings are necessary for the use of a family, supported wholly or partly by his labor.

Sec. 51. No territorial or county treasurer, sheriff, constable, or other public officer, shall be liable to answer as garnishee for moneys in his possession as such public officer, belonging to, or claimed by any judgment debtor.

OF EVIDENCE.

CHAPTER IV.

Of the competency of witnesses.

Sec. 1. Every person believing in the existence of a Supreme Being, who will punish false swearing, if otherwise competent, may be a witness in any action or proceeding.

Sec. 2. No person offered as a witness shall be excluded from giving evidence by reason of his interest in the event of the action.

Sec. 3. The last section shall not apply to a party to the action, nor to any person for whose immediate benefit it is prosecuted or defended. When an assignor of a thing in action or contract is examined as a witness on behalf of any person deriving title through or from him, the adverse party may offer himself as a witness to the same matter in his own behalf, and he shall be so received. But such assignor shall not be admitted to be examined in behalf of any person deriving title through or from him, against any executor or administrator.

Sec. 4. No person offered as a witness shall be excluded from giving evidence, by reason of conviction for crime, but such conviction may be shown to affect his credibility.

Sec. 5. The following persons shall not be competent to testify:

1. Those who are of unsound mind, or intoxicated at the time of their production for examination;

2. Children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly;

3. Indians, or persons having more than one-half of Indian blood, in an action or proceeding to which a white person is a party.

Sec. 6. In order to encourage confidence, and to preserve it inviolate, the following persons shall not be examined as witnesses:

1. A husband shall not be examined for or against his wife, nor a wife for or against her husband; nor can either, during marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during marriage. But this exception shall not apply to a civil action or proceeding by one against the other; nor to a criminal action or proceeding for a crime committed by one against the other;

2. An attorney or counsellor shall not, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment;

3. A clergyman or priest shall not, without the consent of the person making the confession, be examined as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs;

4. A regular physician or surgeon shall not, without the consent of his patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him to prescribe or act for the patient;

5. A public officer shall not be examined as to communications made to him in official confidence, when the public interest would suffer by the disclosure.

Manner of compelling the attendance of witnesses.

SEC. 7. No person shall be obliged to attend as a witness before any court of record, judge, justice of the peace, commissioner, referee, or other officer, in any civil action out of the county in which he resides, unless his residence be within twenty miles of such court, judge, justice of the peace, commissioner, referee or other officer. And no person shall be compelled to attend as a witness in any civil action or proceeding, unless the fees be paid or tendered to him, which are allowed by law for one day's attendance as a witness, and for travelling to and returning from the place where he is required to attend, provided such fees be demanded by him at the time of service of the subpena.

SEC. 8. The subpena may require not only the personal attendance of the person to whom it is directed, at a particular time and place to testify as a witness, but may also require him to bring with him any books, documents, or other things under his control.

SEC. 9. The subpena shall be issued as follows:

1. To require attendance before a court of record, or at the trial of an issue therein, it shall be issued in the name of the United States, and be under the seal of the court, before which the attendance is required, or in which the issue is pending;

2. To require attendance out of such a court, before a judge, justice of the peace, commissioner, referee, or other officer, authorized to administer oaths, or take testimony in any matter under the laws of this territory, it shall be issued by such judge, justice of the peace, commissioner, referee, or other officer before whom the attendance is required;

3. To require attendance before a commissioner appointed to take testimony by a court of any other state, territory or country, it may be issued by any judge, or justice of the peace, in places within their respective jurisdictions.

SEC. 10. Such subpena may be served by any white person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him a copy thereof, or by leaving such copy at the place of his abode.

SEC. 11. A person present in court or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpena issued by such court or officer.

SEC. 12. If any person duly served with a subpena, and obliged to attend as a witness shall fail so to do, without any reasonable excuse, he shall be liable to the aggrieved party for all damages occasioned by such failure, to be recovered in a civil action.

SEC. 13. Such failure to attend, as required by the subpena, shall also be considered a contempt, and upon due proof of the service thereof, the witness may be punished by a fine not exceeding fifty dollars.

SEC. 14. The court, judge, justice of the peace or other officer, in such case, may issue an attachment to bring such witness before them, to answer for the contempt, and also to testify as a witness in the cause in which he was subpenaed.

Sec. 15. If the witness be a prisoner confined in a jail or prison within this territory, an order for his examination in prison, upon deposition, or for his temporary removal and production before a court or officer, for the purpose of being orally examined, may be issued.

Sec. 16. Such order can only be made upon affidavit, showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

Examination of parties.

Sec. 17. A party to an action or proceeding, may be examined as a witness, at the instance of the adverse party, or of one of several adverse parties, and for that purpose may be compelled in the same manner, and subject to the same rules of examination as any other witness to testify at the trial, or he may be examined on a commission.

Sec. 18. Instead of the examination being had at the trial as provided by the last section, the plaintiff at the time of filing his complaint or afterwards, and the defendant at the time of filing his answer, or afterwards, may file in the clerk's office, interrogatories for the discovery of facts and documents material to the support or defence of the action, to be answered on oath by the adverse party.

Sec. 19. Such interrogatories shall be answered, and such answers filed in the clerk's office, within twenty days after the same are served on the party interrogated, unless for cause shown a further time be allowed by the court, or judge thereof.

Sec. 20. A party to an action having filed interrogatories to be answered by the adverse party, as prescribed by the last two sections, shall not thereby be precluded from examining such adverse party as a witness at the trial.

Sec. 21. The testimony of a party either upon an examination at the trial, or upon interrogatories filed, may be rebutted by adverse testimony.

Sec. 22. If a party refuse to attend, and testify at the trial, or to be examined upon a commission, or to answer any interrogatories filed, his complaint, answer or reply, may be stricken out and judgment taken against him, and he may also in the discretion of the court, be proceeded against as in other cases for a contempt.

Sec. 23. A party examined by an adverse party, as in this chapter provided, may be examined on his own behalf in respect to any matter pertinent to the issue. But if he testify to any new matter, not responsive to the inquiries put to him by the adverse party, or necessary to explain or qualify his answer thereto; or to discharge when his answer would charge himself, such adverse party may offer himself as a witness on his own behalf in respect to such new matter, and shall be received.

Sec. 24. A person for whose immediate benefit the action is prosecuted or defended, though not a party to the action, may be examined as a witness in the same manner, and subject to the same rules of examination as if he were named as a party.

Of depositions taken in the Territory.

SEC. 25. The testimony of a witness in this territory, may be taken by deposition, to be read in evidence in any action, suit or proceeding commenced and pending in any court in this territory, in the following cases:

1. When the witness resides out of the county, and more than twenty miles from the place of trial;

2. When the witness is about to leave the county, and go more than twenty miles from the place of trial, and there is a probability that he will continue absent when the testimony is required;

3. When the witness is sick, infirm or aged, as to make it probable that he will not be able to attend at the trial.

SEC. 26. Either party may have the deposition of a witness taken in this territory, before any judge of the district court, justice of the peace, clerk of the supreme or district courts, master in chancery, mayor of a city or notary public, on serving upon the adverse party or his attorney of record, previous notice of the time and place of examination. Such notice shall be at least three days, and in addition one day, Sundays excepted, for every twenty miles of the distance of the place of examination, from the residence of the person to whom notice is given, unless for a cause shown, a judge of the district court prescribe a shorter time. When a shorter time is prescribed, a copy of the order shall be served with the notice.

SEC. 27. The deposition shall be written by the officer taking the same, or by the witness, or by some disinterested person in the presence and under the direction of such officer. When completed it shall be carefully read to, or by the witness, corrected if desired, and subscribed by him, and certified by the officer substantially as follows:

Territory of Oregon, }
County of ——— } ss.

I, A. B., justice of the peace, in and for the said county (or judge, clerk, &c., as the case may be,) do hereby certify that the above deposition was taken before me, and reduced to writing by myself (or witness, &c. as the case may be,) at ——— in said county, on the ——— day of ———, 18—, at ——— o'clock, in pursuance of notice, that the above named witness, before examination, was sworn (or affirmed) to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to (or by) said witness, and then subscribed by him.

Dated at ———, the ——— day of ———, 18—.

A. B., Justice of the Peace.

SEC. 28. The deposition shall be enclosed and sealed by the officer taking the same, [illegible] subject to all legal exceptions, to the competency or credibility of the witness, or the manner of taking the deposition. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was taken at the time of the examination.

SEC. 31. No deposition shall be used if it shall appear that the reason for taking it no longer exists; *provided however*, that if the party producing the deposition in such case shall show any sufficient cause then existing for using such deposition, it may be admitted.

SEC. 32. When the plaintiff in any action shall discontinue it, or when it shall be dismissed for any cause, and another action shall afterwards be commenced for the same cause, between the same parties or their respective representatives, all depositions lawfully taken in the first action, may be used in the other, in the same manner and subject to the same conditions and objections as if originally taken for such other action; provided, that the deposition shall have been duly filed in the court where the first action was pending, and shall remain in the custody of the court, from the termination of the first action until the commencement of the other.

SEC. 33. When an action shall have been appealed from one court to another, all depositions lawfully taken to be used in the court below, may be used in the appellate court in the same manner, and subject to such exemptions for informality or irregularity and none other, as were taken to such depositions in writing in the court below.

SEC. 34. Any witness may be subpœnaed and compelled by any officer authorized to take depositions, to appear and give his deposition at any place within twenty miles of the abode of such witness, in like manner and under the same penalties as he may be subpœnaed and compelled to attend as a witness in any court.

Of depositions taken out of the Territory.

SEC. 35. The testimony of a witness out of this territory may be taken by deposition, to be read in evidence in any action, suit or proceeding pending in any court in this territory.

SEC. 36. The deposition of a witness out of the territory, shall be taken upon a commission issued by the clerk under the seal of the court, upon an order of the court, or a judge thereof, which order may be made on the application of either party, upon giving to the adverse party ten days' previous notice in writing, together with a copy of the interrogatories intended to be put to such witness. It shall be issued to a person [illegible]

[illegible]

Sec. 38. The commission shall authorize the commissioner or commissioners to administer an oath to the witness, and to take his deposition in answer to the several interrogatories annexed to such commission, or when the examination is to be without interrogatories in respect to the question in dispute; to certify the deposition to the court; and to direct it to the clerk of the court, or such other person designated or agreed upon, and forward it to him by mail or other usual channel of conveyance.

Sec. 39. A trial or other proceeding shall not be postponed by reason of a commission not returned, except upon affidavit or other evidence satisfactory to the court that the testimony of the witness is necessary, and that proper diligence has been used to obtain it.

Of proceedings to perpetuate testimony.

Sec. 40. When any person shall be desirous to perpetuate the testimony of any witness, he shall make a statement in writing, setting forth briefly and substantially his title, claim, or interest in or to the subject concerning which he desires to perpetuate the evidence and the names of all persons interested or supposed to be interested therein, and also the name of the witness proposed to be examined, which statement shall be under oath and filed in the district court. If the subject of the proposed deposition relate to real estate within this territory, the statement shall be filed in the county where the lands, or any part thereof lie, otherwise in the county where the parties, or some of them, reside. Upon such statement, an application may be made to such court, or a judge thereof, to allow the examination of such witness.

Sec. 41. The court or judge shall appoint a time and place for hearing such application, and shall order notice thereof, and of the statement to be served on all persons mentioned therein, as adversely interested in the matter. The notice shall be served personally on all those living in the territory at least twenty days before the time of hearing the application. Upon those who are not residents of the territory, it shall be served by publication, or otherwise, in the same manner as a summons is served upon a non-resident.

Sec. 42. If upon such hearing of the parties, or of the applicant alone, should no adverse party appear, the court or judge shall be satisfied that there is sufficient cause for taking the deposition, an order shall be made, allowing the examination of the witness; and such court or judge shall direct a commission to issue therefor, in like manner as a commission to take the testimony of witnesses in other cases.

Sec. 43. The deposition of such witness, whether residing in this territory or not, shall be taken upon written interrogatories filed by the applicant, and cross interrogatories, filed by any party adversely interested, if he shall think fit; and it shall be taken and returned substantially in the same manner as if taken upon upon commission, to be used in any cause pending in the same court.

Sec. 44. The deposition, when returned, shall be filed in the office of the clerk of the court by whom the commission was issued, and if a trial be had between the person at whose request the deposition was taken, and the persons named in the statement, or any of them, or their successors in interest, upon proof of the death or insanity of the witness, or of his inability to attend the trial, by reason of age, sickness or settled infirmity, the deposition, or a certified copy thereof, may be used by either party, subject to all legal objections. But if the parties attend at the examination, no objection to the form of the interrogatory shall be made at the trial, unless the same were taken at the time of the examination.

Provisions relating to records, documents and other writings.

SEC. 45. Any court in which an action is pending, or a judge thereof, may, upon notice, order either party to give to the other within a specified time, an inspection and copy, or permission to take a copy of any book, document or paper in his possession, or under his control, containing evidence relating to the merits of the action or the defence therein. If compliance with the order be refused, the court may exclude the book, document, or paper from being given in evidence; or if wanted as evidence, by the party applying, may direct the jury to presume it to be such as he alleges it to be; and the court may also punish the party refusing as for a contempt. This section shall not be construed to prevent a party from compelling another to produce books, papers or documents, when he is examined as a witness.

SEC. 46. Any party producing a writing as genuine which has been altered or appears to have been altered after its execution, in a part material to the question in dispute, and such alteration is not noted in the writing, shall account for the appearance or alteration. He may show that the alteration was made by another without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made. If he do that, he may give the writing in evidence, but not otherwise.

SEC. 47. The records and proceedings of any court of the United States, or of any state or territory, shall be admissible in evidence, in all cases in this territory, when authenticated by the attestation of the clerk, prothonotary or other officer having charge of the records of such court, with the seal of such court annexed.

SEC. 48. Whenever any deed, conveyance, mortgage, bond or other writing, shall have been recorded or filed in pursuance of law, copies of such deed, conveyance, mortgage, bond or other writing, duly certified by the officer having the lawful custody thereof, with the seal of office annexed, shall be received in evidence to all intents and purposes, as the originals themselves.

SEC. 49. Copies of all papers on file in the offices of the Surveyor General of Oregon, Secretary of Oregon Territory, Territorial Treasurer, Territorial Auditor, and any County Treasurer, or any matter recorded in either of the said offices, duly certified by the respective officers, with the respective seals of office annexed, shall be evidence in all the courts of this territory.

SEC. 50. Any certificate of residence and cultivation upon the public lands, issued by the Surveyor General in pursuance of law, shall be evidence in all courts in this territory.

SEC. 51. A seal of a court or public office, when required to any writ, process or proceeding, or to authenticate a copy of any record, or document, may be affixed by making an impression directly on the paper, which shall be as valid as if made upon a wafer or on wax.

Sec. 52. Printed copies of the statute laws of any state, territory, or foreign government, if purporting to have been published under the authority of the respective governments, or if commonly admitted and read as evidence in their courts, shall be admitted in all courts in this territory, and on all other occasions as presumptive evidence of such laws.

CHAPTER V.

Of appeals in actions at law.

Sec. 1. A judgment or order in an action at law, in any of the district courts, may be removed to the supreme court as provided in this chapter.

Sec. 2. An order made out of court, without notice to the adverse party, may be vacated or modified without notice, by the judge who made it; or may be vacated or modified on notice in the manner in which other motions are made.

Sec. 3. Any party aggrieved may appeal in the cases prescribed in this chapter. The party appealing shall be known as the appellant, and the adverse party as the appellee; but the title of the action shall not be changed in consequence of the appeal.

Sec. 4. The appeal allowed by this chapter, shall be taken within one year after the judgment is rendered, or the order made.

Sec. 5. An appeal may be taken to the supreme court in the following cases:

1. From a final judgment in an action or special proceeding, commenced in the district court, or brought there from another court;
2. From an order granting, or refusing to grant a provisional remedy;
3. From an order granting or refusing a new trial, or when it sustains or overrules a demurrer;
4. From an order affecting a substantial right made in such action, when such order in effect determines the action and presents a judgment from which an appeal may be taken;
5. From an order made upon a summary application in an action after judgment, and affecting a substantial right.

Sec. 6. The appeal shall be made by filing with the clerk of the court, with whom the judgment or order appealed from is entered, a notice stating the appeal from the same, or some special part thereof, and serving a copy of the notice on the adverse party or his attorney. When a party shall give, in good faith, notice of appeal from a judgment or order, and shall omit through mistake to do any other act necessary to perfect the appeal, or to stay proceedings, the court may permit an amendment on such terms as may be just.

Sec. 7. When the party who has the right to appeal, wishes a statement of the case to be annexed to the record of the judgment or order, he shall within twenty days after the entry of such judgment or order, prepare such statement, which shall contain the grounds upon which he intends to rely on the appeal, and so much of the evidence as may be necessary to explain the grounds, and no more; and shall serve a copy thereof upon the adverse party or his attorney. The appellee may, within five days thereafter, prepare amendments to the statement, and serve a copy upon the appellant. If such amendments be admitted, the statement shall be corrected accordingly; if not admitted, the statement and amendments shall be presented to the judge who tried or heard the case, upon notice of two days to the appellee, and a true statement shall thereupon be settled by such judge.

SEC. 8. If the party shall omit to make a statement within the time limited in the last section, he shall be deemed to have waived his right thereto; and when a statement is made, and the parties shall omit within the several times above limited, the one party to propose amendments, the other to notify an appearance before the judge, they shall respectively be deemed the former to have agreed to the statement as proposed, and the latter to have agreed to the amendments as proposed. But the several periods of time above limited may be enlarged upon good cause shown by the judge before whom the cause was tried.

SEC. 9. The statement, when settled by the judge, shall be signed by him with his certificate, that the same has been allowed, and is correct. When the statement is agreed upon by the parties, they or their attorneys shall sign the same, with their certificate, that it has been agreed upon by them, and is correct. In either case, when settled or agreed upon, it shall be filed with the clerk.

SEC. 10. The clerk shall annex the statement if the appeal be from a final judgment to the judgment roll, if the appeal be from an order to such order, or a copy thereof.

SEC. 11. The provisions of the last five preceding sections shall not be applicable to appeals taken from an order made upon affidavits filed, but such affidavits shall be annexed to the order, in the place of the statement mentioned in those sections.

SEC. 12. Upon the appeal allowed by the provisions of this chapter, being perfected, the appellant shall furnish the appellate court, a copy of the notice of appeal, the judgment roll and the statement annexed, certified by the clerk to be a correct copy.

SEC. 13, Upon an appeal from a judgment the court may review any intermediate order, involving the merits and necessarily affecting the judgment.

SEC. 14. Upon an appeal from a judgment or order, the appellate court may reverse, affirm or modify the judgment or order appealed from in the respect mentioned in the notice of appeal, and as to any, or all of the parties, and may set aside, affirm, or modify any or all of the proceedings subsequent to or dependant upon such judgment or order, and may if necessary or proper order a new trial. When the judgment or order is reversed or modified, the appellate court may make complete restitution of all property and rights lost by the erroneous judgment or order, and when it appears to the appellate court, that the appeal was made for delay, it may add to the costs such damages as may be just, not exceeding ten per cent upon the amount of the judgment below, exclusive of interest and costs.

SEC. 15. To render an appeal effectual for any purpose, a written undertaking shall be executed on the part of the appellant, by at least two sureties, to the effect that the appellant will pay all costs and damages which may be awarded against him on the appeal, not exceeding two hundred and fifty dollars, or that sum shall be deposited with the clerk with whom the judgment or order was entered, to abide the event of the appeal. Such undertaking or deposit may be waived by a written consent on the part of the appellee.

SEC. 16. If the appeal be from a judgment or order directing the payment of money, it shall not stay the execution of the judgment, unless a written undertaking be executed on the part of the appellant, by at least two sureties, to the effect that they are bound in double the amount of the judgment, that if the judgment appealed from, or any part thereof, be affirmed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if it be affirmed only in part, and all damages and costs which shall be awarded against the appellant upon the appeal.

SEC. 17. If the judgment or order appealed from, direct the assignment or delivery of documents or personal property, the execution of the judgment or order, shall not be stayed by appeal, unless the things required to be assigned or delivered, be brought into court, or placed in the custody of such officer or receiver as the court may appoint, or unless an undertaking be entered into on the part of the appellant by at least two sureties, and in such amount as the court or judge thereof may direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.

SEC. 18. If the judgment or order appealed from direct the execution of a conveyance, or other instrument, the execution of the judgment, or order, shall not be stayed by the appeal until the instrument shall have been executed and deposited with the clerk, with whom the judgment or order is entered, to abide the judgment of the appellate court.

SEC. 19. If the judgment or order appealed from direct the sale or delivery of possession of real property, the execution of the same shall not be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that, during the possession of such property by the appellant, he will not commit, or suffer to be committed, any waste thereon, and that if the judgment or order be affirmed, he will pay the value of the use and occupation of the property, from the time of the appeal, until the delivery of possession thereof, pursuant to the judgment or order, not exceeding a sum, to be fixed by a judge of the court by which the judgment was rendered or the order made, and which shall be specified in the undertaking.

SEC. 20. Whenever an appeal is perfected, as provided by the preceding sections in this chapter, it shall stay all further proceedings in the court below, upon the judgment or order appealed from, or upon the matter embraced therein; but the court below may proceed upon any other matter included in the action, and not affected by the judgment appealed from. And the court below may, in its discretion, dispense with or limit the security required by said sections, when the appellant is an executor, administrator, trustee or other person acting in another's right; and may also in all cases limit such security to an amount not less than ten thousand dollars, when it would otherwise exceed that sum. *Provided*, such security shall not be limited to an amount less than the judgment, and twenty per cent. additional.

SEC. 21. The undertakings, prescribed by sections fifteen, sixteen, seventeen and nineteen, may be in one instrument or several, at the option of the appellant, Such undertakings shall be filed with the clerk with whom the judgment or order appealed from was entered, and a copy including the names and residence of the sureties, shall be served on the adverse party with a notice of the appeal, unless a deposite be made as provided in section fifteen and a notice thereof given.

SEC. 22. An undertaking upon an appeal shall be of no effect, unless it be accompanied by the affidavit of the sureties, that they are each worth the amount specified therein, over and above all debts and liabilities, exclusive of property exempt from execution. The adverse party may however except to the sufficiency of the sureties, within ten days after the filing of the undertaking, and unless they or other sureties, justify before a judge of the court below, or the clerk thereof, within ten days thereafter (upon notice to the adverse party of not less than five days) the appeal shall be regarded as if no such undertaking had been given.

SEC. 23. In the cases not provided for in sections fifteen, sixteen, seventeen, eighteen, nineteen and twenty, the perfecting of an appeal by giving the undertaking or making the deposit, mentioned in section fifteen, shall stay proceedings in the court below upon the judgment or order appealed from; except that when it directs the sale of perishable property, the court may order the property to be sold, and the proceeds thereof to be deposited to abide the judgment of the appellate court.

SEC. 24. Whenever the supreme court shall be equally divided in opinion on hearing an appeal, the cause shall stand continued until all the judges are on the bench.

SEC. 25. When the judgment is rendered on the appeal, it shall be certified by the clerk of the supreme court, to the clerk with whom the judgment roll is filed, or the order appealed from is entered, such certificate of judgment shall be delivered to any party, interested in having it enforced, upon the payment to such clerk of the supreme court of his costs upon the appeal.

SEC. 26. In cases of appeal from the judgment, the clerk with whom the judgment roll is filed, shall attach the certificate from the clerk of the supreme court to the judgment roll, and enter a minute of the judgment of the supreme court, on the docket against the original entry. In cases of an appeal from an order, the clerk shall enter at length in the records of the court the certificate received, and also a minute against the entry of the order appealed from, that such order has been affirmed, reversed or modified, as the case may be, by the supreme court on appeal.

SEC. 27. When judgment is rendered upon the appeal, and certified to the court in which the judgment roll is filed, such court shall carry into effect the judgment or determination of the supreme court by execution, as in other cases.

CHAPTER [illegible].

Of miscellaneous provisions in actions at law.

Sec. 1. Every direction of a court or judge made or entered in writing and not included in a judgment, is denominated an order. An application for an order is a motion.

Sec. 2. Motions may be made to the court at term, or to a judge in vacation, unless otherwise provided by statute.

Sec. 3. Motions shall be made within the district in which the action is triable. Orders made out of court, without notice, may be made by a judge of the court in which the action is brought in any part of the territory. No order to stay proceedings for a longer time than twenty days shall be granted by a judge out of court, except upon previous notice to the adverse party.

Sec. 4. When a notice of a motion is necessary, it shall be served ten days before the time appointed for hearing; but the court or judge may, by an order to show cause, prescribe a shorter time.

Sec. 5. Notice shall be in writing, and notices and other papers may be served on the party or attorney in the manner prescribed in the next three sections where not otherwise provided by statute.

Sec. 6. The service may be personal by delivery to the party or attorney on whom the service is required to be made, or it may be as follows:

1. If upon an attorney, it may be made during his absence from his office, by leaving the notice or other papers with his clerk therein, or with a person having charge thereof; or where there is no person in the office, by leaving them between the hours of six in the morning and nine in the evening, in a conspicuous place in the office, or if it be not open, so as to admit of such service, then by leaving them at the attorney's residence, with some person of suitable age and discretion.

2. If upon a party, it may be made by leaving the notice or other paper at his residence, between the hours of six in the morning, and nine in the evening, with some person of suitable age and discretion.

Sec. 7. Service by mail may be made where the person making the service, and the person on whom it is to be made, reside in different places between which there is a regular communication by mail.

Sec. 8. In case of service by mail, the notice or other paper shall be deposited in the post-office, addressed to the person on whom it is to be served, at his place of residence, and the postage paid; and in such case, the time of service shall be double that required in case of personal service.

Sec. 9. Where a defendant shall not have demurred, answered, or given the plaintiff or his attorney written notice of his appearance, service of notice or papers in the ordinary proceedings in an action, need not be made upon him, unless he be imprisoned for want of bail.

Sec. 10. Where a plaintiff or a defendant who has demurred, answered, or given notice of his appearrnce, resides out of the territory, and has no attorney in the action, the service may be made by mail, if his residence be known, if not known, on the clerk for the party.

Sec. 11. The provisions of this chapter shall not apply to the service of a subpoena, or other process, or of any paper to bring a party into contempt.

Sec. 12. An affidavit, notice, or other paper, without the title of the action or proceeding in which it is made, or with a defective title, shall be as valid and effectual for every purpose as if duly entitled, if it intelligibly refer to the action or proceeding in which it is made.

Sec. 13. The time within which an act is to be done, as provided in this chapter, shall be computed by excluding the first day and including the last. If the last day be Sunday, it shall be excluded.

Sec. 14. When a cause of action has arisen in another state or territory, or in a foreign country, and by the laws thereof, an action thereon cannot be maintained against a person by reason of lapse of time, an action shall not be maintained against him in this territory, except in favor of a citizen thereof who has held the cause of action from the time it accrued.

CHAPTER VII.

Of set-off in actions at law.

Sec. 1. In the following cases, and under the following circumstances, a defendant, in an action at law, may set off demands which he has against the plaintiff:

1. It must be a demand arising upon judgment, or upon contract, express or implied, whether such contract be written or unwritten, sealed or without seal; and if it be founded upon a bond or other contract having a penalty, the sum equitably due, by virtue of its condition shall be set off;

2. It must be due to him in his own right, either as being the original creditor or payee, or as being the assignee or owner of the demand;

3. It must be a demand for property sold, for money paid, or for services done; or if it be not such a demand, the amount must be liquidated, or be capable of being ascertained by calculation;

4. It must have existed at the time of the commencement of the action, and must then have belonged to the defendant;

5. It shall be allowed only in actions founded upon demands which could themselves be the subject of set-off, according to law;

6. If there be several defendants, the demands set off must be due to all of them jointly;

7. It must be a demand existing against the plaintiff in the action, unless the action be brought in the name of a plaintiff who has no real interest in the contract upon which the action is founded; in which case no set-off of a demand against the plaintiff shall be allowed, unless as hereinafter specified.

Sec. 2. If the action be founded upon a contract, other than a negotiable promissory note, or bill of exchange which has been assigned to the plaintiff, a demand existing against such plaintiff, or any assignor of such contract at the time of the assignment thereof, and belonging to the defendant in good faith before notice of such assignment, may be set off to the amount of the plaintiff's debt, if the demand be such as might have been set off against such assignor, while the contract belonged to him.

SEC. 3. If the action be upon a negotiable promissory note, or bill of exchange assigned to the plaintiff after it became due, a set-off to the amount of the plaintiff's debt may be made of a demand existing against any person or persons who shall have assigned or transferred such note or bill after it became due, if the demand be such as might have been set off against the assignor while the note or bill belonged to him.

SEC 4. If the plaintiff be a trustee for any other, or if the action be in the name of a plaintiff who has no real interest in the contract upon which the action is founded, so much of a demand existing against those whom the plaintiff represents, or for whose benefit the action is brought, may be set off as will satisfy the plaintiff's debt, if the same might have been set off in an action brought by those beneficially interested.

SEC. 5. In actions brought by executors and administrators, demands against their testators or intestates, and belonging to defendant at the time of their death, may be set off by the defendant in the same manner as if the action had been brought by, and in the name of the deceased.

SEC. 6. When a set-off shall be established in an action brought by executors or administrators, and a balance found due to the defendant, the judgment rendered therefor against the plaintiffs, shall have the same effect as if the action had been originally commenced by the defendant.

SEC. 7. In actions against executors and administrators, and against trustees and others sued in their representative character, the defendants may set off demands belonging to their testators or intestates, or those whom they represent, in the same manner as the persons so represented would have been entitled to set off the same, in an action against them.

SEC. 8. To entitle a defendant to a set-off, he must set the same forth in his answer.

SEC. 9. If the amornt of the set-off, duly established, be equal to the plaintiff's debt or demand, judgment shall be entered that the plaintiff take nothing by his action; if it be less than the plaintiff's debt or demand, the plaintiff shall have judgment for the residue only.

SEC. 10. If there be found a balance due from the plaintiff in the action, to the defendant, judgment shall be rendered in favor of the defendant for the amount thereof; but no such judgment shall be rendered against the plaintiff when the contract, which is the subject of the action shall have been assigned before the commencement of such action, nor for any balance due from any other person than the plaintiff in the action.

CHAPTER VIII.

Of costs in actions at law.

SEC. 1. The measure and mode of compensation of attorneys and counsellors shall be left to the agreement, express or implied, of the parties; but there may be allowed to the prevailing party upon the judgment, certain sums by way of indemnity for his expenses in the action which allowances are termed costs.

SEC. 2. Costs shall be allowed of course to the plaintiff upon a judgment in his favor, in the following cases:

1. In an action for the recovery of real property, or when a claim of title to real property arises on the pleadings, or is certified by the court to have come in question at the trial;

2. In an action to recover the possession of personal property when the value of the property amounts to fifty dollars or more, such value shall be determined by the jury, court or referee by whom the action is tried;

3. In an action for the recovery of money or damages, when the plaintiff shall recover fifty dollars or more;

4. In the actions of which a justice of the peace has not jurisdiction; but in an action for assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction, in which a justice of the peace has not jurisdiction, if the plaintiff recover less than fifty dollars damages, he shall recover no more costs than damages.

SEC. 3. When several actions are brought on one bond, undertaking, promissory note, bill of exchange or other instrument in writing, or in any other case for the same cause of action against several parties who might have been joined as defendants in the same action, no costs shall be allowed to the plaintiff in more than one of such actions which may be at his election, if the parties proceeded against in the other actions were, at the commencement of the previous action, openly within this territory; but the disbursements of the plaintiff shall be allowed in each action.

SEC. 4. Costs shall be allowed of course to the defendant in the actions mentioned in the second section, unless the plaintiff be entitled to costs therein.

SEC. 5. In all actions where there are several defendants not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such of the defendants as have judgment in their favor, or any of them.

SEC. 6. When allowed to either party, costs shall be as follows:

1. In all actions settled before issue is joined, five dollars;

2. In all actions when judgment is rendered without a jury, ten dollars;

3. In all actions when judgment is rendered after empanneling a jury, fifteen dollars;

4. In all actions removed to the supreme court, and settled before argument, ten dollars;

5. In all actions when judgment is rendered in the supreme court, after argument, fifteen dollars.

SEC. 7. The prevailing party, in addition to the allowances for costs, as provided in the last section, shall also be allowed for all necessary disbursements, including the fees of officers allowed by law, the fees of witnesses, the necessary expenses of taking depositions by commission or otherwise, the compensation of referees, and the expsnse of printing the papers upon an appeal. The disbursements shall be stated in detail, and verified by affidavit, which shall be filed with the clerk of the court.

SEC. 8. The fees of referees shall be four dollars to each for every day spent in the business of the reference, but the parties may agree in writing upon any other rate of compensation, and thereupon such rate shall be allowed.

SEC. 9. When an application shall be made to a court or referees to postpone a trial, the payment to the adverse party of a sum not exceeding ten dollars, besides the fees of witnesses, may be imposed as the condition of granting the postponement.

SEC. 10. When in an action for the recovery of money only, the defendant alleges in his answer that before the commencement of the action, he tendered to the plaintiff the full amount to which he was entitled, in such specie as by agreement ought to be tendered, and thereupon brings into court for the plaintiff, if in money, the amount so tendered, and the allegation be found true, the plaintiff shall not recover costs, but shall pay them to the defendant.

SEC. 11. If the defendant in any action pending, shall at any time deposit with the clerk of the court for the plaintiff the amount which he admits to be due, together with all costs that have accrued, and notify the plaintiff thereof, and such plaintiff shall refuse to accept the same in discharge of the action, and shall not afterwards recover a larger amount than that deposited with the clerk, exclusive of interest and cost, he shall pay all costs that may accrue from the time such money was so deposited.

SEC. 12. In all civil actions tried before a justice of the peace, in which an appeal shall be taken to the district court, and the party appellant shall not recover a more favorable judgment in the district court than before the justice of the peace, such appellant shall pay all costs accruing after the appeal.

SEC. 13. When costs are adjudged against an infant plaintiff, the guardian by whom he appeared in the action, shall be responsible therefor, and payment thereof may be enforced by attachment.

SEC. 14. In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute, costs shall be recovered, as in an action by or against a person prosecuting or defending in his own right, but such costs shall be chargeable only upon, or collected off the estate, fund or party represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally for mismanagement or bad faith in such action or defence.

SEC. 15. When the cause of action after the commencement of the action by assignment, or in any other manner, becomes the property of a person not a party thereto, and the prosecution or defense is thereafter continued, such person shall be liable to the costs in the same manner as if he were a party, and payment thereof may be enforced by attachment.

SEC. 16. In all actions prosecuted in the name, and for the use of the territory, or in the name and for the use of any county, the territory or county shall be liable for costs in the same cases and to the same extent as private parties.

SEC. 17. When the decision of a court of inferior jurisdiction in an action of special proceeding, is brought before the supreme court, or a district court for review, such proceedings shall, for purposes of costs, be deemed an action at issue upon a question of law, from the time the same is brought into the *supreme court or district court*, and *costs* thereon may be awarded and collected in such manner as the court shall direct according to the nature of the case.

Sec. 18. In the following cases the costs of an appeal to the supreme court, shall be in the discretion of the court:

1. When a new trial shall be ordered;
2. When a judgment shall be affirmed in part and reversed in part.

Sec. 19. In all other actions and proceedings than those mentioned in this chapter where no provision is made for the recovery of costs, they may be allowed or not, and if allowed may be apportioned between the parties, in the discretion of the court.

Sec. 20. Any party aggrieved by the taxation of costs by the clerk of the court, may, upon application, have the same re-taxed by the court in which the action or proceeding is had.

Sec. 21. When the plaintiff in an action resides out of the territory, or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant. When required, all proceedings in the action shall be stayed until an undertaking, executed by two or more persons be filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of two hundred dollars. A new or an additional undertaking may be ordered by the court or judge, upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new or additional undertaking be executed and filed.

Sec. 22. Each of the sureties on the undertaking mentioned in the last section, shall annex to the same an affidavit that he is a resident of the county, and worth double the amount specified in the undertaking, over and above all his just debts and liabilities, exclusive of property exempt from execution. The plaintiff may deposit with the clerk the sum of two hundred dollars in lieu of an undertaking, as required by the last section.

OF ACTIONS RELATING TO REAL PROPERTY.

CHAPTER IX.

Actions to recover the possession of real property.

Sec. 1. Any person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action, which may be brought against any person acting as owner, landlord or tenant of the property claimed.

Sec. 2. Whenever it appears that the defendant is only a tenant, the landlord may be substituted after ten days' notice to him that such action is pending, or upon such further notice as the court or judge thereof may think proper.

Sec. 3. When the defendant is a non-resident, service of the summons may be made upon his agent for the, property residing in this territory, with the like effect as though made upon the principal, or service may be made by publication as in other cases.

Sec. 4. The plaintiff in his complaint shall state that he is entitled to the possession of the property, particularly describing it; the interest he claims therein; and that the defendant unlawfully keeps him out of the possession, and the damages if any, which he claims for witholding the property.

Sec. 5. The answer of the defendant shall set forth under what claim of right, if any, he holds possession, and if as tenant, the name and residence of his landlord shall be given, and if he does not defend for the whole of the property, he shall specify for what particular part he does defend.

Sec. 6. In an action against a tenant, the judgment shall be conclusive against a landlord who has received notice as hereinbefore provided.

Sec. 7. If the plaintiff prevail in an action for the recovery of real property, he shall also in the same action be entitled to recover damages for witholding the property.

Sec. 8. If the right of the plaintiff to the possession of the property expire after the commencement of the action, and before the trial, the verdict shall be returned according to the fact, and judgment shall be entered only for the damages and costs.

Sec. 9. When damages are claimed for witholding the property recovered, upon which permanent improvements have been made by the defendant, or those under whom he claims, holding under color of title adversely to the claims of the plaintiff in good faith, the value of such improvements shall be allowed as a set-off against such damages.

Sec. 10. The court or judge thereof, on motion, and after notice to the opposite party, may, for cause shown, grant an order allowing the party applying therefor to enter upon the property in controversy, and make survey and admeasurement thereof, for the purposes of the action.

Sec. 11. The order shall describe the property, and a copy thereof shall be served upon the owner or occupant, and thereupon the party may enter upon the property, and make such survey and admeasurement, but if any unnecessary injury be done to the premises, he shall be liable therefor.

Sec. 12. An action for the recovery of real property against a person in possession, cannot be prejudiced by any alienation made by such person, either before or after the commencement of the action.

Sec. 13. A mortgage of real property shall not be deemed a conveyance, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale according to law.

Sec. 14. When in case of a lease of real property, and the failure of the tenant to pay rent, the landlord has a right to re-enter for such failure, he may bring an action to recover possession of the property, but if at any time before judgment in such action the lessee or his successor in interest pay to the plaintiff, or bring into court the amount of rent then in arrear with interest, and the costs of the action, and perform the other covenants or agreements on the part of the lessee, he shall be entitled to the possession, according to the terms of the lease.

Actions for nuisances, waste and trespasses on real property.

SEC. 15. Anything which is injurious to health or indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

SEC. 16. If a guardian, tenant for life or years, joint tenant or tenant in common of real property, commit waste thereon, any person injured by the waste may bring an action against him therefor, in which action there may be judgment for treble damages.

SEC. 17. Every person who shall wilfully cut down, girdle, or otherwise injure any tree, timber or shrub on the land of another person, or in the street or highway in front of any person's house, village or city lot, or cultivated grounds, or on the commons or public grounds of any city, or town, or on the street or highway thereof, without lawful authority, shall be liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor, in an action in any court having jurisdiction.

SEC. 18. If upon the trial of such action, it shall appear that the trespass was casual or involuntary, or that the defendant had probable cause to believe that the land on which such trespass was committed, was his own, or that of the person in whose service, or by whose direction the act was done, or that such tree or timber was taken for the purpose of making or repairing any public highway or bridge, judgment shall be given for only the single damages assessed in the action.

SEC. 19. When real property shall have been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession after the sale, and before possession is delivered under the conveyance.

CHAPTER X.

Actions for the partition of real property.

SEC. 1. When several persons hold and are in possession of real property as joint tenants, or tenants in common, in which one or more of them have an estate of inheritance, or for life or years, an action may be brought by one or more of such persons, in the district court of the proper county, for a partition thereof according to the respective rights of the persons interested therein, and for a sale of such property or a part of it, if it appear that a partition cannot be made without great prejudice to the owners.

SEC. 2. The interest of all persons in the property whether such persons be known or unknown, shall be set forth in the complaint, specifically and particularly as far as known to the plaintiff, and if one or more of the parties or the share or quantity of interest of any of the parties be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a *contingent remainder*, so that such parties cannot be named, that fact shall be set forth in the complaint.

SEC. 3. No persons who have or claim any liens upon the property, by mortgage, judgment or otherwise need be made parties to the action, unless such liens be matters of record.

SEC. 4. The summons shall be directed to all the joint tenants and tenants in common, and all persons having any liens of record, by mortgage, judgment or otherwise upon the property or upon any particular portion thereof, and generally to all persons unknown, who have or claim any interest in the property.

SEC. 5. If a party having a share or interest be unknown, or any of the known parties reside out of the territory, or cannot be found therein and such fact is made to appear by affidavit, the summons may be served on such unknown or absent party by publication as in other cases. When publication is made the summons as published, shall be accompanied by a brief description of the property, which is the subject of the action.

SEC. 6. The defendants shall set forth in their answers, fully and particularly the nature and extent of their interest in the property, and if such defendants claim a lien upon the property by mortgage, judgment or otherwise, they shall state the amount remaining due thereon, and whether the amount has been secured in any other way or not, and if so secured the nature and extent of the security, or they shall be deemed to have waived their rights to such lien.

SEC. 7. The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried and determined by such action, and where a sale of the premises is necessary, the title shall be ascertained by proof to the satisfaction of the court before the judgment of sale shall be made, and when service of the complaint shall have been made by publication, like proof shall be required of the rights of the absent or unknown parties, before such judgment shall be rendered, except that when there are several unknown persons having an interest in the property, their rights may be considered together in the action, and not as between themselves.

SEC. 8. The plaintiff shall produce to the court on the hearing of the case the certificate of the recorder, and the clerk of the district court, where the property is situated, showing whether there were or were not any liens of record upon the property or any part thereof at the time of the commencement of the action.

SEC. 9. If it appear by the certificate of the recorder or the clerk that there were liens of record at the time of the commencement of the action, and the persons holding or claiming such liens, be not made parties to the action, the court shall either order such parties to be brought in by an amendment or supplemental complaint, or appoint a referee to ascertain whether their liens have been paid, or if not paid what amount remains due, and the date of their liens, and whether the amount remaining due thereon has been secured in any way, and if secured, the nature and extent of the security.

SEC. 10. The plaintiff shall cause a notice to be served a reasonable time previous to the day for appearance before the referee apppointed, as provided in the last section, on each person having liens of record, who is not a party to the action, to appear before the referee at a specified time and place, to make proof by his own affidavit or otherwise of the true amount due, or to become due contingently or absolutely thereon. In case such person be absent or his residence be unknown service may be made by publication or notice to his agents, under the direction of the court or judge thereof, in such manner as may be proper. The report of the referee thereon shall be made to the court, and shall be confirmed, modified or set aside, and a new reference ordered as the justice of the case may require.

Sec. 11. If it be alleged in the complaint and established by evidence or if it appear by the evidence without such allegation in the complaint to the satisfaction of the court, that the property or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof, and for that purpose may appoint one or more referees. Otherwise upon the requisite proofs being made, it shall order a partition according to the respective rights of the parties as ascertained by the court, and appoint three referees therefor, and shall designate the portion to remain undivided, for the owners, whose interests remain unknown or not ascertained.

Sec. 12. The referees before proceeding to the discharge of their duties, shall be sworn or affirmed before some officer competent to administer oaths, honestly and impartially to execute the trust reposed in them, which oath or affirmation shall be filed with the clerk of the court.

Sec. 13. In making the partition the referees shall divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, designating the several portions by proper land marks, and may employ a surveyor with the necessary assistants to aid them therein.

Sec. 14. The referees or a majority of them shall make a report of their proceedings, specifying therein the manner of executing their trust, describing the property divided and the shares allotted to each party with a particular description of each share.

Sec. 15. The court may confirm or set aside the report, and if necessary appoint new referees. Upon the report being confirmed, judgment shall be rendered, that such partition be effectual forever, which judgment shall be binding and conclusive:

1. On all parties named therein, and their legal representatives who have at the time any interest in the property divided or any part thereof as owners in fee, or as tenants for life or for years, or as entitled to the reversion, remainder or the inheritance of such property or any part thereof, after the termination of a particular estate therein, and who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof as tenants for years or for life;
2. On all persons interested in the property, who may be unknown to whom notice shall have been given of the application for partition by publication as directed by section five; and
3. On all other persons claiming from such parties or persons or either of them.

Sec. 16. But such judgment and partition shall not affect any tenants for years or for life to the whole of the property which is the subject of partition; nor shall such judgment and partition preclude any person except such as are specified in the last section from claiming title to the property in question, or from controverting the title of the parties between whom the partition shall have been made.

SEC. 17. The expenses of the referees, including those of a surveyor and his assistants, when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by law to the referees, shall be paid by the plaintiff, and may be allowed as part of the charges.

SEC. 18. When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall thereafter be a charge only on the share assigned to such party; but such share shall be first charged with its just proportion of the costs of the partition in preference to such lien.

SEC. 19. When a part of the property only is ordered to be sold, if there be an estate for life, or years, in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

SEC. 20. The proceeds of the sale of the incumbered property shall be applied under the direction of the court, as follows:

1. To pay its just proportion of the general costs of the action;
2. To pay the costs of the reference;
3. To satisfy and cancel of record the several liens in their order of priority, by payment of the sums due and to become due; the amount remaining due to be verified by affidavit at the time of payment;
4. The residue among the owners of the property sold, according to their respective shares.

SEC. 21. Whenever any party to the action who holds a lien upon the property or any part thereof, has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof.

SEC. 22. The proceeds of sale, and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto, whenever the court so directs. But if no direction be given, all such proceeds and securities shall be paid into court, or deposited therein, or as directed by the court.

SEC. 23. When the proceeds of sales of any shares or parcels belonging to persons who are parties to the action, and who are known, are paid into court, the action may be continued as between such parties for the determination of their respective claims thereto, which shall be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee at the discretion of the court, and the court may if necessary require such parties to present the facts or law in controversy by pleadings as in original actions.

SEC. 24. All sales of real property made by referees under this chapter, shall be made by public auction to the highest bidder, upon notice published in the manner required for the sale of real property on execution. The notice shall state the terms of sale, and if the property, or any part of it is to be sold, subject to a prior estate, charge or lien, that shall be stated in the notice.

SEC. 25. The court shall, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises, of which it may direct a sale on credit; and for that portion of which the purchase money is required by the provisions hereinafter contained to be invested for the benefit of unknown owners, infants, or parties out of the territory.

SEC. 26. The referees may take separate mortgages, and other securities for the whole, or convenient portions of the purchase money on such parts of the property as are directed by the court to be sold on credit, in the name of the clerk of the district court, and his successor in office; and for the shares of any known owner of full age, in the name of such owner; and for the shares of an infant, in the name of the guardian of such infant.

SEC. 27. When the estate of any tenant for life or years, in any undivided part of the property in question, shall have been admitted by the parties, or ascertained by the court to be existing at the time of the order of sale, and the person entitled to such estate shall have been made a party to the action, such estate may be first set off out of any part of the property and a sale made of such parcel, subject to the prior unsold estate of such tenant therein; but if in the judgment of the court, a due regard to the interest of all the parties require that such estate be also sold the sale may be so ordered.

SEC. 28. Any person entitled to an estate for life or years in any undivided part of the property, whose estate shall have been sold, shall be entitled to receive such sum in gross as may be deemed upon principles of law applicable to annuities, a reasonable satisfaction for such estate, and which the person so entitled shall consent to accept instead thereof by an instrument in writing filed with the clerk of the court. Upon the filing of such consent, the clerk shall enter the same in the minutes of the court.

SEC. 29. If such consent be not given, filed and entered, as provided in the last section, before the report of sale by the referees, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be invested for the benefit of the person entitled to such estate for life or years, and shall order the same to be paid to such party or deposited in court for him as the case may require.

SEC. 30. If the persons entitled to such estate for life or years be unknown the court shall provide for the protection of their rights in the same manner as far as may be, as if they were known and had appeared.

SEC. 31. In all cases of sales in partition when it shall appear that any person has a vested or contingent future right, or estate in any part of the property sold, the court shall ascertain and settle the proportional value of such contingent or vested right or estate, according to the principles of law applicable to annuities and survivorship, and shall direct such proportion of the proceeds of sale to be invested, secured or paid over in such manner, as to protect the rights and interests of the parties.

SEC. 32. In all cases of sales of property, the terms shall be made known at the time; and if the premises consist of distinct farms or lots, they shall be sold separately.

SEC. 33. Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase; nor shall the guardian of an infant party be interested in the purchase of any real property, being the subject of the action; except for the benefit of the infant. All sales contrary to the provisions of this section, shall be void.

SEC. 34. After completing a sale of the property, or any part thereof ordered to be sold, the referees shall report the same to the court with a description of the different parcels of land sold to each purchaser; the name of the purchaser; the price paid or secured; the terms and conditions of the sale; and the securities, if any taken. The report shall be filed in the office of the clerk of the district court in the county where the property is situated.

SEC. 35. If the sale be confirmed by the court, an order shall be entered, directing the referees to execute conveyances and take securities pursuant to such sale, which they are hereby authorized to do. Such order may also give directions to them respecting the disposition of the proceeds of sale.

SEC. 36. When a party entitled to a share of the property, or an incumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

SEC. 37. The conveyances shall be recorded in the county where the premises are situated, and shall be a bar against all persons interested in the property in any way, who shall have been named as parties in the action, and against all such parties and persons as were unknown if the summons have been served by publication, and against all persons claiming from them or either of them.

SEC. 38. When there are proceeds of a sale belonging to an unknown owner, or to a person without the territory, who has no legal representative within it, the same shall be invested in securities on interest, for the benefit of the persons entitled thereto.

SEC. 39. When the security for the proceeds of sale is taken, or when an investment of any such proceeds is made, it shall be done, except as hereinafter provided, in the name of the clerk of the district court of the county where the papers are filed, and his successors in office who shall hold the same for the use and benefit of the parties interested subject to the order of the court.

SEC. 40. When security is taken by the referees on a sale, and the parties interested in such security by an instrument in writing under their hands, delivered to the referees, agree upon the shares and proportions to which they are respectively entitled; or when shares and proportions have been previously adjudged by the court, such securities shall be taken in the names of and payable to the parties respectively entitled thereto; and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the clerk.

SEC. 41. The clerk, in whose name a security is taken, or by whom an instrument is made, and his successors in office shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct; and shall file in his office all securities taken, and keep an account in a book provided and kept for that purpose in the clerk's office free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

SEC. 42. When it appears that partition cannot be made equal be tween the parties, according to their respective rights, without prejudice to the rights and interests of some of them, the court may adjudge compensation to be made by one party to another on account of the inequality of partition, but such compensation shall not be required to be made to others by owners unknown, nor by infants, unless in case of an infant it appear that he has personal property sufficient for that purpose, and that his interest will be promoted thereby.

SEC. 43. When the share of an infant is sold, the proceeds of the sale may be paid by the referees making the sale to his general guardian, or the special guardian appointed for him in the action, upon giving the security required by law, or directed by order of the court.

SEC. 44. The guardian who may be entitled to the custody and management of the estate of an insane person or other person adjudged incapable of conducting his own affairs whose interest in real property shall have been sold, may receive, in behalf of such person, his share of the proceeds of such real property from the referees, on executing with sufficient sureties, an undertaking, approved by a judge of the district court, that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or to his legal representative.

SEC. 45. The general guardian of an infant, and the guardian entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, who is interested in real estate held in joint tenancy, or in common, or in any other manner, so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without action, and agree upon the share to be set off to such infant or other person entitled, and may execute a release in his behalf to the owners of the shares of the parts to which they may respectively be entitled, upon an order of the court.

SEC. 46. The costs of partition, including fees of referees and other disbursements shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case they shall be a lien on the several shares, and the judgment may be enforced by execution against such shares, and against other property held by the respective parties. When however a litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto or any of them.

SEC. 47. The court, with the consent of the parties, may appoint a single referee, instead of three referees, in the proceedings under the provisions of this chapter; and the single referee when thus appointed, shall have all the powers, and perform all the duties required of the three referees.

CHAPTER XI.

Mechanics' and laborers' liens.

SEC. 1. Any person who shall hereafter by virtue of any contract with the owner of any building, or with the agent of such owner, perform any labor upon, or furnish any materials, engine or machinery for the construction or repairing of such building, shall, upon filing the notice prescribed in the next section, have a lien upon such building, and the lot of ground upon which the same is situated, for such labor done, or materials, engine, or machinery furnished, when the amount shall exceed twenty dollars.

SEC. 2. Any person wishing to avail himself of the provisions of this chapter, whether his claim be due or not, shall file in the recorder's office of the county in which such building is situated, at any time within three months after the completion of such building or repairs, a notice of his intention to hold a lien upon such building for the amount due, or to become due, specifically setting forth such amount, and containing a description of the building upon which the labor was performed, or for which the materials, engine or machinery were furnished; which notice shall be recorded by the recorder in a book to be kept for that purpose.

SEC. 3. Such lien shall cease to exist at the expiration of one year after the completion of the building or repairs, unless before that time an action to enforce the same shall have been commenced in the district court of the county in which the premises are situated, by the person having such lien against the owner with whom or with whose agent the contract was made, unless such claim be not due at the expiration of one year after such completion, in which case the action shall be commenced within three months after the same shall have become due.

SEC. 4. The complaint of the plaintiff shall contain a brief statement of the contract on which the claim is founded, the amount due thereon, the time when the notice was filed with the recorder, the time when the building was completed, if it be completed, with a description of the premises, and any other material facts, and shall pray that the premises may be sold, and the proceeds of the sale be applied to the discharge of the lien.

SEC. 5. The summons shall be served as in other cases, or instead of service by publication, it may be made by delivering a copy thereof to the person in possession of the premises. If the defendant shall have sold or disposed of the premises before the service of the summons, the court shall direct notice of the proceedings to be served on the purchaser or his agent for the premises, who may thereupon if he desire it, be made a party defendant in the action.

SEC. 6. The proceedings in an action to enforce such lien, shall be the same as in other actions, except as otherwise provided in this chapter; and if judgment be rendered for the plaintiff, he may have an execution issued thereon to sell the premises, and thereupon the sheriff shall proceed as upon other executions for the sale of real property; and the owner or any lien creditor shall have the same rights of redemption after a sale.

SEC. 7. The liens created in pursuance of the provisions of this chapter, shall have precedence over all other liens, after the commencement of the building, and if upon a sale of the premises by execution, the proceeds be insufficient to pay all such liens, the court shall order them to be paid in proportion to the amount respectively due to each, and any other property of the defendant not exempt from execution, may be sold to satisfy such execution.

SEC. 8. The liens against any building shall also extend to the lot of ground upon which such building is erected, not exceeding one-half of an acre in extent, if the land shall have been, at the time of erecting such building, the property of the person who shall have caused the same to be erected. The metes and bounds of such lot may be determined by the parties, or if they cannot agree upon the same, the court at any time after the rendition of judgment, may appoint one or more referees to determine such boundaries.

SEC. 9. All, or any number of persons having liens on the same building, pursuant to the provisions of this chapter, may join in one action, but their claims shall be stated distinctly, as in a separate action, and the judgment shall show the amounts to which they are respectively entitled.

SEC. 10. Whenever any person having a lien, by virtue of the provisions of this chapter, shall have received satisfaction for his claim and the costs of his proceedings thereon, he shall upon the request of any person interested, and upon the payment or tender of the costs of entering satisfaction, within six days after such payment or tender, enter satisfaction of his demand in the office where the same is recorded, and upon failure to do so, he shall forfeit fifty dollars to the party aggrieved, and all damages which he may have sustained in consequence of such failure or neglect.

SEC. 11. Any sub-contractor, journeyman, or laborer employed in the construction or repairing of any building, or in furnishing any materials or machinery for the same, may give to the owner thereof notice in writing, particularly setting forth the amount of his claim, and the service rendered, for which his employer is indebted to him, and that he holds the owner responsible for the same, and the owner of the building shall be liable for such claim if indebted to the employer to the amount; if not, then for the amount due from him to said employer at the time such notice was served, which claim or amount may be recovered by an action against the owner, if brought within one year after the completion of the building, or the repairs.

SEC. 12. Whenever any sub-contractor, journeyman, or laborer shall recover any such claim from the owner of the building, the same may be set off by such owner in any action brought against him by the person who otherwise would be entitled to recover the same under the contract.

Liens on personal property.

SEC. 13. Any person who shall make, alter, repair, or bestow labor on any article of personal property, at the request of the owner or lawful possessor thereof, shall have a lien on such property so made, altered or repaired, or upon which labor has been bestowed, for his just and reasonable charges for the labor he has performed, and the materials he has furnished; and such person may hold and retain possession of the same, until such just and reasonable charges shall be paid.

SEC. 14. Any person who is a common carrier, or who shall at the request of the owner or lawful possessor of any personal property, carry, convey, or transport the same from one place to another; and any person who shall safely keep or store any personal property at the request of the owner or lawful possessor thereof; and any person who shall depasture or feed any horses, cattle, hogs, sheep, or other live stock, or bestow any labor, care or attention upon the same, at the request of the owner or lawful possessor thereof, shall have a lien upon such property, for his just and reasonable charges for the labor, care and attention he has bestowed, and the food he has furnished, and he may retain the possession of such property until such charges be paid.

Sec. 15. If such just and reasonable charges be not paid within three months after the care, attention and labor shall have been performed or bestowed, or the materials or food shall have been furnished, the person having such lien may proceed to sell, at public auction the property mentioned in the last two sections, or a part thereof, sufficient to pay such just and reasonable charges. Before selling, he shall give notice of such sale by advertisement for three weeks in some newspaper published in the county, if there be one, or if there be no such paper, then by posting up notice of such sale in three of the most public places in the city or township for three weeks before the time of such sale; and the proceeds of such sale shall be applied, first to the discharge of such lien, and the costs and expenses of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof.

Sec. 16. The provisions of the last three sections shall not interfere with any special agreement of the parties.

CHAPTER XII.

Of proceedings to enforce liens on boats and vessels.

Sec. 1. Every boat or vessel used in navigating the waters of this territory, shall be liable and subject to a lien:

1. For wages due to persons employed, for work done or services rendered on board of such boat or vessel;

2. For all debts contracted by the master, owner, agent or consignee thereof, on account of labor done or materials furnished by mechanics, tradesmen or others in the building, repairing, fitting out, furnishing or equipping such boat or vessel, or on account of stores and supplies furnished for the use thereof;

3. For all sums due for wharfage, anchorage or towage of such boats or vessels within this territory;

4. For all demands or damages accruing from the non-performance or mal-performance of any contract of affreightment, or of any contract touching the transportation of persons or property, entered into by the master, owner, agent or consignee of the boat or vessel, on which such contract is to be performed, and for damages or injuries done to persons or property by such boat or vessel.

Sec. 2. The classes of claims above specified, shall have priority according to the order in which they are above enumerated, and the liens under this act shall have precedence of all other liens and claims against such boat or vessel.

Sec. 3. Any person having a demand as aforesaid, instead of proceeding for the recovery thereof against the master, owner, agent or consignee of the boat or vessel, may at his option commence an action against such boat or vessel by name.

SEC. 4. Any person wishing to commence an action against a boat or vessel, shall file his complaint against such boat or vessel by name, with the clerk of the district court of the county in which such boat or vessel may lie or be. The complaint shall set forth the plaintiff's demand in all its particulars, and on whose account the same accrued, and shall be verified by the plaintiff or some credible person for him.

SEC. 5. Whenever such complaint shall be filed, the clerk shall issue a warrant thereon, commanding the sheriff to seize the boat or vessel mentioned in the complaint, with her tackle, apparel and furniture, and retain the same until discharged from such custody by due course of law.

SEC. 6. Upon the return of any warrant issued as prescribed in the last section, proceedings shall be had in the district court against the boat or vessel seized in the same manner as if the action had been commenced against the person on whose account the demand accrued.

SEC. 7. The master, owner, agent or consignee of the boat or vessel may appear on behalf of such boat or vessel, and answer the complaint.

SEC. 8. If in any action commenced under the provisions of this chapter, the master, owner, agent or consignee shall not appear and answer the complaint, the plaintiff may proceed to take judgment in the same manner and under the same restrictions as in a civil action against a natural person; if an issue of fact be joined, the same proceedings shall be had as in other actions.

SEC. 9. If the master, owner, agent or consignee shall before final judgment in any action, commenced in pursuance of the provisions of this chapter, enter into an undertaking in favor of the plaintiff with sufficient security to be approved by the judge or clerk of the court in which the action is pending, conditioned to satisfy the amount which shall be adjudged to be due and owing to the plaintiff, on the determination of the action together with all costs accruing, such boat or vessel with its tackle, apparal and furniture shall be discharged from future detention by the sheriff.

SEC. 10. Such master, owner, agent or consignee may in lieu of the undertaking specified in the last section, deposit in court such an amount of money as the judge or clerk shall direct, being sufficient to pay the demand of the plaintiff and the costs of such suit, which are likely to accrue in such action. If judgment be for the defendant, such deposit shall be returned to the person, making the same, or if a balance remain after satisfying any judgment in favor of the plaintiff and costs of suit, such balance shall be so returned.

SEC. 11. If judgment be rendered against any boat or vessel in favor of the plaintiff, the court shall make an order directed to the sheriff, commanding him to sell such boat or vessel, together with its tackle, apparel and furniture to satisfy the judgment and costs which may have accrued in the cause, which order shall be executed and returned in the same manner as other executions.

SEC. 12. If an undertaking with surety shall have been given according to the ninth section of this chapter, and judgment shall have been rendered in favor of the plaintiff, a judgment shall also be rendered upon the undertaking, and execution shall be issued for the amount of judgment and costs in favor of the plaintiff against the principal and security in such undertaking.

SEC. 13. When any boat or vessel shall be sold in pursuance of the provisions of this chapter, the officer making the sale shall execute to the purchaser a bill of sale therefor, and such boat or vessel shall in the hands of the purchaser and his assigns, be free and discharged from all previous liens and claims under this chapter.

SEC. 14. Any other person having or claiming a lien against any boat or vessel in pursuance of the provisions of this chapter, may at any time after the sale upon execution, and before payment over of any surplus in the hands of the sheriff, commence an action against such boat by name as if the same had not been sold, and serve notice thereof upon the former master, owner, agent or consignee. While such action is pending the sheriff shall not pay over any surplus that may be in his hands to such master, owner, agent or consignee.

SEC. 15. In the distribution of the proceeds of sale, claims of a prior class shall be paid entire before any payment shall be made upon claims of a subsequent class; and when the money to be applied to any class shall be insufficient to pay all the claims of that class, it shall be apportioned rateably among the claims of such class.

SEC. 16. If it shall appear to the court in which the action is pending, or the judge thereof, that the liens against such boat or vessel, can be satisfied by a sale of the tackle, apparel and furniture, or a part thereof, or a fractional share in such boat or vessel, such court or judge may modify the order of sale accordingly. If in pursuance of such order, a sale be made of a fractional share in such boat or vessel, the purchaser shall hold such share jointly with the other owners.

SEC. 17. Justices of the peace within their respective counties, shall have cognizance of all cases arising under this chapter, when the demand claimed shall not exceed the jurisdiction of a justice of the peace.

SEC. 18. In all their proceedings, justices of the peace shall conform to the provisions of the law governing justices courts, and as nearly as may be to the provisions of this chapter, as they apply in the district court.

SEC. 19. Each warrant issued by a justice of the peace under this chapter shall be returnable forthwith; and upon the return of such warrant, it shall be the duty of the justice of the peace to hear and determine the complaint of the plaintiff in a summary manner.

SEC. 20. Upon good and sufficient cause shown by the master, owner, agent or consignee of any boat or vessel seized under the provisions of this chapter, the justice of the peace may grant a continuance of the cause, but no such continuance shall be granted to the plaintiff.

SEC. 21. Sheriffs, constables, and other officers, shall receive the same fees and compensation for their services under this chapter as are allowed to them in proceedings by attachment.

SEC. 22. In all cases arising under this chapter, before justices of the peace, the plaintiff or the master, owner, agent, or consignee, may appeal to the district court; but if the plaintiff appeal, the constable or other officer shall not detain the boat or vessel in his custody, after the payment of such judgment as shall be rendered in favor of the plaintiff, by the justice of the peace.

SEC. 23. All actions against a boat or vessel, under the provisions of this chapter, shall be commenced within one year after the cause of action shall have accrued.

CHAPTER XIII.

Actions to vacate charters and letters patent, and to prevent the usurpation of an office or franchise.

Sec. 1. The writ of scire facias, the writ of quo warranto, and proceedings by information in the nature of quo warranto are abolished, and the remedies heretofore obtainable in those forms, may be obtained by actions at law under the provisions of this chapter.

Sec. 2. An action may be brought in the district court by the prosecuting attorney of the district, in the name of the territory, whenever the legislative assembly shall so direct against a corporation, for the purpose of vacating or annulling the act of incorporation, or an act renewing its corporate existence, on the ground that such act or renewal was procured upon some fraudulent suggestion, or concealment of a material fact, by the persons incorporated or some of them, or with their knowledge and consent.

Sec. 3. An action may be brought by such prosecuting attorney, in the name of the territory, on leave granted by the district court or a judge thereof, for the purpose of vacating the charter or annulling the existence of a corporation other than municipal whenever such corporation shall :

1. Offend against any of the provisions of the act or acts creating, altering or renewing such corporation ; or

2. Violate the provisions of any law by which such corporation shall have forfeited its charter by abuse of its powers ; or

3. Whenever it shall have forfeited its privileges or franchises by failure to exercise its powers ; or

4. Whenever it shall have done or omitted any act which amounts to a surrender of its corporate rights, privileges and franchises ; or

5. Whenever it shall exercise a franchise or privilege not conferred upon it by law. And it shall be the duty of such prosecuting attorney, whenever he shall have reason to believe that any of these acts or commissions can be established by proof, to apply for leave, and upon leave granted to bring the action in every case of public interest, and also in every other case, in which satisfactory security shall be given to indemnify the territory against the costs and expenses to be incurred thereby.

Sec. 4. Leave to bring the action may be granted upon the application of the prosecuting attorney; and the district court or judge may, in their discretion, direct notice of such application to be given to the corporation or its officers previous to granting such leave, and may hear the corporation in opposition thereto.

Sec. 5. An action may be brought by the prosecuting attorney of the district in the name of the territory, upon his own information, or upon the complaint of a private party against the party offending, in the following cases :

1. When any person shall usurp, intrude into, or unlawfully hold, or exercise any public office, civil or military, or any franchise within this

territory, or any office in a corporation created by the authority of this territory; or

2. When any public officer, civil or military, has done or suffered an act, which by the provisions of the law makes a forfeiture of his office; or

3. When any association or number of persons act within this territory as a corporation, without being duly incorporated. And it shall be the duty of the prosecuting attorney to bring the action whenever he shall have reason to believe that any of these acts can be proven, or when he shall have been directed to do so by a judge of the district court.

SEC. 6. An action may be brought by the prosecuting attorney of the district in the name of the territory, for the purpose of vacating or annulling letters patent in the following cases:

1. When he shall have reason to believe that such letters patent were obtained by means of some fraudulent suggestion or concealment of a material fact made by a person to whom the same were issued or made, or with his consent or knowledge; or

2. When he shall have reason to believe that such letters patent were issued through mistake, or in ignorance of a material fact; or

3. When he shall have reason to believe that the patentee or those claiming under him have done, or omitted an act in violation of the terms and conditions on which the letters patent were granted, or have by any other means forfeited the interest acquired under the same.

SEC. 7. When an action shall be brought by the prosecuting attorney by virtue of this chapter on the relation or information of a person having an interest in the question, the name of such person shall be joined with the territory as plaintiff.

SEC. 8. Whenever such action shall be brought against a person for usurping an office, the prosecuting attorney, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightfully entitled to the office, with a statement of his right thereto, and in such case upon proof, by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of his usurpation thereof, an order may be granted by a judge of the district court for the arrest of such defendant and holding him to bail, and thereupon he shall be arrested and held to bail in the same manner, and with the same effect, and subject to the same rights and liabilities as in other actions at law where the defendant is subject to arrest.

SEC. 9. In every such case judgment shall be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled, or only upon the right of the defendant as justice shall require.

SEC. 10. If judgment shall be rendered upon the right of the person so alleged to be entitled, in favor of such person, he shall be entitled, after taking the oath of office, and executing such official bond as may be required by law, to take upon himself the execution of the office.

SEC. 11. If judgment be rendered upon the right of the person so alleged to be entitled, in favor of such person, he may recover by action the damages which he may have sustained by reason of the usurpation of the office by the defendant.

SEC. 12. When several persons claim to be entitled to the same office or franchise, an action may be brought against all such persons, in order to try their respective rights to such office or franchise.

Sec. 13. When a defendant, whether a natural person or a corporation, against whom such action shall have been brought, shall be adjudged guilty of usurping or intruding into, or unlawfully holding or exercising any office, franchise or privilege, judgment shall be rendered that such defendant be excluded from such office, franchise or privilege, and also that the plaintiff recover costs against such defendant. The court may also, in its discretion, fine such defendant a sum not exceeding one thousand dollars, which fine when collected shall be paid into the territorial treasury.

Sec. 14. If it shall be adjudged that a corporation, against which an action shall have been brought, pursuant to this chapter, has by neglect, abuse, or surrender, forfeited its corporate rights, privileges and franchises, judgment shall be rendered that the corporation be excluded from such corporate rights, privileges and franchises, and that the corporation be dissolved.

Sec. 15. If judgment be rendered in such action against a corporation, or against persons claiming to be a corporation, the court may cause the costs therein to be collected, by execution, against the persons claiming to be a corporation, or by attachment or process against the directors or other officers of such corporation.

Sec. 16. When such judgment shall be rendered against a corporation, the court shall have the same power to restrain the corporation, to appoint a receiver of its property, and take an account, and make distribution thereof among its creditors, as a court of chancery possesses, and it shall be the duty of the prosecuting attorney, immediately after the rendition of such judgment, to institute proceedings for that purpose.

Sec. 17. Upon the rendition of such judgment against a corporation, or for the vacating or annulling of letters patent, it shall be the duty of the prosecuting attorney to cause a copy of the judgment roll to be forthwith filed in the office of the secretary of the territory.

MANDAMUS AND PROHIBITION.

CHAPTER XIV.

Of the writ of mandamus.

Sec. 1. The writ of mandamus may be issued to any inferior tribunal, corporation, board or person to compel the performance of an act, which the law specially enjoins, as a duty resulting from an office, trust or station, or to compel the admission of a party to the use and enjoyment of a right, or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person.

Sec. 2. This writ shall only be issued in cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It shall be issued upon affidavit on the application of the party beneficially interested.

Sec. 3. The writ shall be either alternative or peremptory. The alternative writ shall state concisely the facts, showing the obligation of the party to whom it is directed to perform the act, and his omission to perform it, and command him that immediately after the receipt of the writ, or some other specified time, he do the act required to be performed, or show cause before the court out of which the writ issued at a specified time and place, why he has not done so, and that he then and there return the writ with his certificate of what he has done. The peremptory writ shall be in a similar form, except that the words, requiring the party to show cause why he has not done as commanded, shall be omitted.

SEC. 4. When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus may be allowed in the first instance; in all other cases the alternative writ shall be first issued.

SEC. 5. The motion for the writ the allowance and the service thereof, and the enforcement of obedience thereto, shall be such as the court may direct.

SEC. 6. On the return day of the alternative writ, or such further day as the court may allow, the party on whom the writ shall have been served, may show cause by answer under oath, made in the same manner as an answer to a complaint in an action at law.

SEC. 7. If no answer be made, a peremptory mandate shall be allowed against the party on whom the writ shall have been served. If an answer be made containing new matter, the same shall not conclude the applicant, who may on the trial or other proceedings avail himself of any valid objection to its sufficiency, or may countervail it by proof, either in direct denial or by way of avoidance.

SEC. 8. No other pleading or written allegation, shall be allowed than the writ and answer, and these pleadings shall have the same effect and be construed and amended in the same manner as proceedings in an action at law; and the issues thereby joined shall be tried, and the further proceedings had in the same manner as in an action at law.

SEC. 9. Issues of fact joined in the case of a writ of mandamus issued out of the supreme court, shall be tried as provided in the next section.

SEC. 10. When the parties consent thereto, the court may try the issues of fact arising upon the pleadings of the parties, or the same may be referred as in actions at law in the district court; but when either party shall refuse to consent to a trial, other than a trial by jury, the supreme court may order a jury of twelve men, possessing the qualifications for jurors, in the district court, to be summoned to appear forthwith before the court to try such issue; and in case any of the jurors so summoned, should for any cause be rejected or be disqualified to act as a juror in the case, the court may order others to be summoned until a jury shall be obtained.

SEC. 11. When a jury shall be impanneled, the same proceedings shall be had as in the trial of an action at law in the district court.

SEC. 12. If judgment be given for the applicant, he shall recover the damages which he shall have sustained, to be ascertained by the court or jury, or by referees, as in an action at law, together with his costs and charges; and for such damages, costs and charges an execution may be issued; and a peremptory mandamus shall also be awarded without delay.

SEC. 13. Whenever a peremptory mandamus has been issued and directed to any inferior tribunal, corporation, board or person commanding the performance of any public duty, specially enjoined by law, if it appear to the court that any member of such inferior tribunal, corporation, board, or such person upon whom the writ has been personally served, has without just excuse refused or neglected to perform the duty so enjoined, the court may impose on him a fine not exceeding five hundred dollars. Such fine when collected, shall be paid into the territorial treasury. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned for a period not exceeding three months, and may take any orders necessary and proper for the complete enforcement of the writ.

SEC. 14. The several district courts of this territory shall have original jurisdiction in cases of mandamus, except in cases when such writ is directed to one of the judges of the district court, in his official capacity, and the said court shall proceed upon all such cases in the same manner as in an action at law, unless otherwise provided by statute.

Writs of prohibition.

SEC. 15. Writs of prohibition shall only be issued out of the supreme court, and such writs shall be applied for, upon affidavits, by motion to the court or a judge thereof in vacation, in the same manner as writs of mandamus; and if the cause shown shall appear to the court or judge to be sufficient, a writ shall be thereupon issued, which shall command the court and party, or officer to whom it shall be directed, to desist, and refrain from any further proceedings in the suit, or matter specified therein, until the next term of the supreme court, or the further order of the court thereon; and to show cause at the next term of the said court, or some day to be named in the same term, at the option of the court, if issued in term time, why they should not be absolutely restrained from any further proceeding in such action or matter.

SEC. 16. Such writ shall be served upon the court and party, or officer to whom it shall be directed, in the same manner as a writ of mandamus; and a return shall in like manner be made thereto by such court or officer, which may be enforced by attachment.

SEC. 17. The court and party or officer on whom the writ shall have been served, may by the return or answer under oath, show cause why they should not be restrained as mentioned in the writ of prohibition; and the person prosecuting such writ may take issue or demur to the matters relied on in the return or answer by such court and party or officer; and the like proceedings shall be had for the trial of such issues of law or fact, joined between the parties, and for the rendering of judgment thereon as in a mandamus.

SEC. 18. The court after hearing the proofs and allegations of the parties, shall render judgment, either that a prohibition absolute restraining the said court and party or officer from proceeding in such action or matter, do issue, or authorizing the court and party or officer to proceed in such action or matter in question; and may make and enforce such order in relation to costs and charges, and the amount thereof as may be deemed just.

CHAPTER XV.

Of the writ of habeas corpus.

SEC. 1. Every person imprisoned or otherwise restrained of his liberty, may prosecute a writ of habeas corpus, according to the provisions of this chapter to obtain relief from such imprisonment or restraint if it shall prove to be unlawful.

SEC. 2. Application for such writ shall be made by petition signed by the party for whose relief it is intended, or by some person in his behalf, to any judge of the supreme or district court being within the county where the prisoner is detained, or if there be no judge within such county, or if he be absent, or for any cause be incapable of acting or having refused to grant such writ, then to any other judge of the supreme or district court most convenient to the place where such prisoner is detained.

SEC. 3. Whenever application for any such writ shall be made to such judge not being within the county where the prisoner is detained, he shall require proof by the oath of the applicant or other sufficient evidence, that there is no judge in such county authorized to grant the writ; or if there be one, that he has refused to grant it; or for some cause to be specially set forth, is incapable of acting; and if such proof be not produced the application shall be denied.

SEC. 4. The petition shall state in substance:

1. That the person in whose behalf the writ is applied for, is imprisoned or restrained of his liberty, the officer or person by whom he is confined or restrained, and the place where, naming all the parties, if their names be known or describing them if they be not;

2. The cause or pretense of such confinement or restraint according to the best of the knowledge and belief of the applicant;

3. If the confinement or restraint be by virtue of any warrant, order or process, a copy thereof shall be annexed, or it shall be averred that by reason of the prisoner being removed or concealed before the application, a demand of such copy could not be made; or that such demand was made, and the legal fees therefor tendered to the officer or person, having such prisoner in his custody and that such copy was refused;

4. If the imprisonment be alleged to be illegal, the petition shall also state in what the alleged illegality consists;

5. It shall be verified by the oath of the applicant, or some other competent person.

SEC. 5. Any judge empowered to grant any writ applied for under this chapter, to whom such petition shall be presented, shall grant such writ without delay, unless it appear from the petition itself, or the documents annexed, that the party can neither be discharged, admitted to bail, nor in any other manner relieved under the provisions of this chapter.

SEC. 6. Every writ of habeas corpus shall be substantially in the following form:

"In the name of the United States:

To the sheriff of, &c., (or to A. B.)

You are hereby commanded to have the body of C. D, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said C. D. shall be called or charged, before E. F., judge of the district court (or supreme court) at, &c. ———, on the ——— day, &c., (or immediately after the receipt of this writ) to do, and receive what shall then and there be considered concerning the said C. D. And have you then and there this writ.

Witness, &c."

Sec. 7. Such writ of habeas corpus shall not be disobeyed for any defect in form. It shall be sufficient:

1. If the person having the custody of the prisoner, be designated either by his name of office if he have any, or by his own name, for if both such names be unknown or uncertain he may be described by an assumed appellation, and any one who may be served with the writ, shall be deemed the person to whom it is directed, although it may be directed to him by a wrong name or description or to another person;

2. If the person, who is directed to be produced, be designated by name, or if his name be uncertain or unknown, he may be described in any other way, so as to designate the person intended.

Sec. 8. If any judge authorized by the provisions of this chapter, to grant writs of habeas corpus, shall wilfully refuse to grant such writ when legally applied for, he shall forfeit for every such offence to the party aggrieved, one thousand dollars.

Sec. 9. The persons upon whom any such writ shall have been duly served, shall state in his return, plainly and unequivocally:

1. Whether he have or have not the party in his custody or power or under his restraint, and if he have not, whether he has had the party in his custody, or under his power or restraint at any, and what time prior or subsequent to the date of the writ;

2. If he have the party in his custody or power or under his restraint the authority and true cause of such imprisonment or restraint setting forth the same at large;

3. If the party be detained by virtue of any writ, warrant or other written authority, a copy thereof shall be annexed to the return, and the original shall be produced, and exhibited on the return of the writ, to the judge; before whom the same is returnable;

4. If the person upon whom such writ shall have been served, shall have had the party in his power or custody, or under his restraint at any time prior or subsequent to the date of the writ, but has transfered such custody or restraint to another, the return shall state particularly to whom, at what time for what cause and by what authority such transfer took place. The return shall be signed by the person making the same, and except where such person shall be a sworn public officer, and shall make his return in his official capacity, it shall be verified by oath.

Sec. 10. The person or officer on whom the habeas corpus shall have been served, shall also bring the body of the person in his custody, according to the command of such writ, except in the case of the sickness of such person, as hereinafter provided.

Sec. 11. If the person upon whom such writ shall have been duly served, shall refuse or neglect to obey the same by producing the party named in such writ, and making a full and explicit return to every such writ within the time required by the provisions of this chapter, and no sufficient excuse shall be shown for such refusal or neglect, it shall be the duty of the judge before whom such writ shall have been made returnable, upon due proof of the service thereof, forthwith to issue an attachment against such person, directed to the sheriff of any county in this territory, and commanding him forthwith to apprehend such person and bring him immediately before such judge, and on such person being so brought, he shall be committed to close custody in the jail of the county in which such judge shall be until he shall make return to such writ, and comply with any order that may be made by the judge in relation to the person for whose relief such writ shall have been issued.

Sec. 12. If a sheriff of any county shall have neglected to return such writ, the attachment may be directed to any coroner or other person, to be designated therein, who shall have full power to execute the same, and such sheriff upon being brought up, may be committed to the jail of any county other than his own.

Sec. 13. The judge, by whom any such attachment shall be issued, may also, at the same time, or afterwards, issue a precept to the sheriff or other person to whom such attachment shall have been directed, commanding him to bring forthwith before such judge, the party for whose benefit such writ shall have been allowed, who shall thereafter remain in the custody of such sheriff or person until he shall be discharged, bailed, or remanded, as the judge shall direct.

Sec. 14. In the execution of such attachment or precept, or either of them, the sheriff or other person to whom they shall be directed, may call to his aid the power of the county, as in other cases.

Sec. 15. The judge, before whom the party shall be brought on such writ, shall, immediately after the return thereof, proceed to examine into the facts contained in such return, and into the cause of the confinement or restraint of such party, whether the same shall have been upon commitment for any criminal or supposed criminal matter, or not.

Sec. 16. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, the judge shall discharge such party from the custody or restraint under which he is held.

Sec. 17. It shall be the duty of the judge forthwith to remand such party, if it shall appear that he is detained in custody, either:

1. By virtue of process issued by any court or judge of the United States, in a case where such court or judge has conclusive jurisdiction; or,

2. By virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree; or

3. For any contempt, specially and plainly charged in the commitment by some court, officer or body having authority to commit for the contempt so charged; and

4. That the time during which such party may be legally detained, has not expired.

Sec. 18. If it appear on the return that the prisoner is in custody by virtue of civil process of any court legally constituted, or issued by an officer, in the course of judicial proceeding before him, authorized by law, such prisoner shall only be discharged in one of the following cases:

1. When the jurisdiction of such court or officer has been exceeded, either as to matter, place, sum or person;

2. When, though the original imprisonment was lawful, yet by some act, omission or event which has taken place afterwards, the party has become entitled to be discharged;

3. When the process is defective in some matter of substance required by law, rendering such process void;

4. When the process, though in proper form, has been issued in a case not allowed by law;

5. When the person having the custody of the prisoner under such process, is not the person empowered by law to detain him; or

6. When the process is not authorized by any judgment or decree of any court, nor by any provision of law.

SEC. 19. But no judge, on the return of any habeas corpus issued under this chapter, shall have power to inquire into the legality or justice of any judgment, decree or execution specified in section seventeen.

SEC. 20. If it appear that the party has been legally committed for any criminal offence, or if he appear by the testimony offered with the return, upon the hearing thereof, to be guilty of such an offence, although the commitment be irregular, the judge, before whom such party shall be brought, shall proceed to let such party to bail, if the case be bailable, and good bail be offered, or if not, shall forthwith remand such party.

SEC. 21. If the party be not entitled to his discharge, and be not bailed, the judge shall remand him to the custody, or place him under the restraint from which he was taken, if the person under whose custody or restraint he was, be legally entitled thereto; if not so entitled, he shall be committed by such judge to the custody of such officer or person as by law is entitled thereto.

SEC. 22. Until judgment be given upon the return, the judge before whom such party shall be brought, may either commit such party to the custody of the sheriff of the county in which such judge shall be, or place him in such care, or under such custody as his age and other circumstances may require.

SEC. 23. When it appears from the return to any such writ, that the party named therein is in custody on any process under which any other person has an interest in continuing his imprisonment or restraint, no order shall be made for his discharge, until it shall appear that the party so interested, or his attorney, if he have one, to be found within the county, shall have had sufficient notice of the time and place at which such writ shall have been made returnable.

SEC. 24. When it shall appear from the return that such party is detained upon any criminal accusation, such judge shall make no order for the discharge of such party, until sufficient notice of the time and place at which such writ shall have been returned, or shall be made returnable, shall be given to the prosecuting attorney of the county in which such judge shall be, if to be found within the county.

SEC. 25. The party brought before any judge on the return of any writ of habeas corpus, may deny any of the material facts set forth in the return, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge, which allegations or denials shall be on oath; and thereupon the judge shall proceed in a summary way to hear such allegations and proofs as may be produced in support of such imprisonment or detention, or against the same, and to dispose of such party as the justice of the case may require.

Sec. 26. Whenever from sickness or infirmity of the person directed to be produced by any writ of habeas corpus, such person cannot without danger be brought before the judge before whom the writ is made returnable, the party in whose custody he is, may state the fact in his return to the writ, verifying the same by his oath, and if the judge be satisfied of the truth of such allegation, and the return be otherwise sufficient, he shall proceed to decide upon such return, and to dispose of the matter, and if it appear that the person detained is illegally imprisoned, confined or restrained of his liberty, the judge shall grant a writ of discharge, commanding those having such person in their custody, to discharge him forthwith; and if it appear that such person is legally detained, imprisoned or confined, and is not entitled to be bailed, such judge shall cease from all further proceedings thereon.

Sec. 27. Obedience to any writ of discharge or to any orderfor the discharge of any prisoner, granted pursuant to the provisionsof this chapter, may be enforced by the judge issuing such writ, or granting such order by attachment in the same manner as herein provided for a neglect to make a return to a writ of habeas corpus, and with the like effect in all respects; and the person guilty of such disobedience, shall forfeit to the party aggrieved one thousand dollars, in addition to any special damage such party may have sustained.

Sec. 28. No sheriff or other officer shall be liable to any action at law for obeying any such writ or order of discharge, and if any action shall be brought against such officer for suffering any person committed to his custody to go at large, pursuant to any such writ or order, he may set up the same in answer in bar of the action.

Sec. 29. No person who has been discharged by the order of any judge, upon a habeas corpus, issued pursuant to the provisions of this chapter, shall be again imprisoned, restrained or kept in custody for the same cause; but it shall not be deemed the same cause:

1. If he shall have been discharged from a commitment on a criminal charge, and be afterwards committed for the same offence by legal order or process of the court wherein he shall be bound by recognizance to appear, or in which he shall be indicted or convicted for the same offence; or

2. If after a discharge for defective proof, or for any material defect in the commitment in a criminal case, the prisoner be again arrested on sufficient proof, and committed by legal process for the same offence; or

3. If in a civil action the party has been discharged for any illegality in the judgment or process hereinbefore specified, and is afterwards imprisoned by legal process for the same cause of action; or

4. If in any civil action he shall have been discharged from commitment on process, and shall be afterwards committed on execution in the same cause, or on mesne process in any other cause after such first action shall have been discontinued.

Sec. 30. If any person shall knowingly recommit, imprison, or restrain of his liberty, or cause to be committed, imprisoned, or restrained of his liberty, for the same cause, except as provided in the last section, any person so discharged, or shall knowingly aid or assist therein, he shall forfeit to the party aggrieved one thousand dollars

SEC. 31. Any one having in his custody, or under his power, any person for whose relief a writ of habeas corpus shall have been, or is about to be duly issued, pursuant to this chapter, who with the intent to elude the service of such writ, or to avoid the effect thereof, shall transfer such prisoner to the custody, or place him under the power or control of another, or conceal him, or change the place of his confinement, and every person who shall knowingly aid or assist in so doing, shall forfeit to the party aggrieved five hundred dollars.

SEC. 32. Whenever it shall appear by satisfactory proof that any person is held in illegal confinement, or custody, and that there is good reason to belive that he will be carried out of the territory, or suffer some irreparable injury before he can be relieved by the issuing of a habeas corpus, any judge authorized to issue such writs, may issue a warrant reciting the facts, and directed to any sheriff, constable or other person, commanding such officer or person to take such prisoner, and forthwith to bring him before such judge, to be dealt with according to law.

SEC. 33. When the proof mentioned in the last section, shall also be sufficient to justify an arrest of the person having such prisoner in his custody, as for a criminal offence, committed in the taking or detaining of such prisoner, the warrant may also contain an order for the arrest of such person for such offence.

SEC. 34. Any officer or person to whom such warrant shall be directed, shall execute the same by bringing the prisoner therein named, and the person who detains him, if so commanded by the warrant, before the judge issuing the same; and thereupon the person detaining such prisoner shall make a return in like manner, and the like proceedings shall be had as if a writ of habeas corpus had been issued in the first instance.

SEC. 35. If the person having such prisoner in his custody, shall be brought before the judge as for a criminal offence, he shall be examined, committed, bailed or discharged by the judge in like manner as in other criminal cases of the like nature.

SEC. 36. Any officer or other person, refusing to deliver a copy of any order, warrant, process or other authority, by which he shall detain any person to any one who shall demand such copy, and tender the fees therefor, shall forfeit two hundred dollars to the person so detained.

SEC. 37. Every writ of habeas corpus may be made returnable at a day certain or forthwith, as the case may be.

SEC. 38. Every such writ shall be indorsed with a certificate that the same has been allowed, and with the date of such allowance, which indorsement shall be signed by the judge allowing the writ.

SEC. 39. Writs of habeas corpus shall only be served by an elector of some county within this territory; and the service thereof shall not be deemed complete, so as to require the prisoner to be brought up before the judge issuing the same, unless the party serving the same shall tender to the person in whose custody the prisoner may be, if such person be a sheriff, coroner, constable or marshal, the fees allowed by law for bringing up such prisoner; nor unless he shall also enter into an undertaking to such sheriff, coroner, constable or marshal, as the case may be, in a penalty double the amount of the sum for which such prisoner may be detained, if he be detained for any specific sum of money; and if not, then in such a sum as the judge granting the writ shall direct, not exceeding one thousand dollars, conditioned that such person shall pay the charges for carrying back such prisoner if he shall be remanded, and that such prisoner will not escape by the way, either in going to or returning from the place to which he is to be taken. If such fees be not paid, or such security be not tendered, the officer to whom the writ is directed, shall make return thereto, in the manner required by section nine of this chapter, and thereupon the judge granting the writ may proceed as if the prisoner were before him, or he may order him to be brought up notwithstanding.

SEC. 40. Every writ of habeas corpus issued pursuant to this chapter, may be served by delivering the same to the person to whom it is directed; if he cannot be found, it may be served by being left at the jail or other place in which the prisoner may be confined with any under officer, or other person of proper age, having charge for the time of such prisoner.

SEC. 41. If the person on whom the writ ought to be served, conceal himself, or refuse admittance to the party attempting to serve the same, it may be served by affixing the same in some conspicuous place on the outside, either of his dwelling house or of the place where the party is confined.

SEC. 42. The judge, allowing a writ of habeas corpus, directed to any other than a sheriff, coroner, constable or marshal, may in his discretion, require as a duty to be performed in order to render the service thereof effectual, that the charges of bringing up such prisoner, shall be paid by the applicant, and in such case he shall, in the allowance of the writ, specify the amount of such charges so to be paid, which shall not exceed the fees allowed by law to sheriffs for similar services.

SEC. 43. If the writ be returnable at a day certain, such return shall be made, and such prisoner produced at the time and place specified therein; if it be returnable forthwith, and the place be within twenty miles of the place of service, such return shall be made, and such prisoner shall be produced within twenty-four hours; and the like time shall be allowed for every additional twenty miles.

CHAPTER XVI.

Actions on official securities, and for fines and forfeitures.

SEC. 1. The official bond or other security of a public officer to the territory, whether with or without securities, shall be construed as security to the territory, and also to all persons severally for the official delinquencies, against which it is intended to provide. If it be to a county, city, village or other municipal body, it shall, in like manner, be construed severally to all persons intended to be secured, as well as to the body politic named therein.

SEC. 2. When a public officer, by official misconduct or neglect of duty shall forfeit his official bond, or render his sureties liable upon an official security, any person injured thereby, or who is by law entitled to the benefit of the security, may bring an action thereon, in his own name against the officer and his sureties to recover the amount to which he may be entitled by reason of the delinquency.

SEC. 3. Before an action can be brought by the plaintiff, other than the territory or body politic named in the security, leave shall be obtained of the district court, or a judge thereof, within the district or county where the action is triable; and leave shall only be granted on a production of a copy of the bond, and an affidavit showing the delinquency, and if the delinquency be such as that if established on the trial, it would entitle the party applying to recover in the action, leave shall be granted.

SEC. 4. A judgment in favor of a party for one delinquency, shall not preclude the same or another party from an action on the same security for another delinquency.

SEC. 5. If it appear in an action against a surety in an official security, that he has already been obliged, by reason of prior recoveries against him on the same to pay amounts which, in the aggregate, are equal to the extent of his undertaking, or that by reason of the insolvency of his principal he will be obliged to pay to that extent on judgments already recovered against the surety, the recovery against a surety shall in all such cases, be limited by the amount of his undertaking, except as otherwise provided by law.

SEC. 6. Upon the execution issued on a judgment recovered upon the official security of a public officer against him and a surety, there shall be indorsed a direction to the officer to whom the execution shall be delivered to collect the same out of the property of the principal, if sufficient can be found, and if not, then to collect it out of the property of the surety.

SEC. 7. If there be several judgments on which executions are at the same time in the sheriff's hands against a public officer, and his sureties, amounting in the aggregate to a sum greater than that for which the sureties are liable, the court shall on their application, limit the amount to be collected from them to the amount of their respective liabilities, and may cause the same to be applied on the judgments or executions in proportion to their amounts.

SEC. 8. Actions for fines and forfeitures may be prosecuted by the officers or persons to whom they are by law given, or those who by special provision of law are authorized to recover them; and whether prosecuted by public officers or private persons, shall be governed by the same rules as other civil actions, except as otherwise specified in this chapter.

SEC. 9. When an action shall be brought for a penalty, which is limited by law not to exceed a certain amount, the action may be brought for that amount, and upon the trial, the amount recovered shall be determined in proportion to the offence.

SEC. 10. A recovery of a judgment for a penalty or forfeiture by collusion between the parties with intent to save the defendant from the consequences contemplated by law, in case where the penalty or forfeiture is given wholly or partly to the prosecutor, shall not prevent the recovery of the same by another person.

SEC. 11. Fines and forfeitures not specially granted or appropriated by law, shall be paid into the territorial treasury; and whenever by the provision of law any property, real or personal shall be forfeited to the territory, or to any officer for its use, an action for the recovery of such property, alleging the grounds of the forfeiture, may be brought by the proper officer in the district court of any county where such property may be.

CHAPTER XVII.

Actions by and against certain public officers and public bodies.

SEC. 1. The following officers may prosecute actions in their official capacity:

1. The court of county commissioners of a county;
2. The directors of a school district;
3. Any organized department of a municipal corporation, having a board of officers in charge of a particular branch of public service, and specially authorized by statute to prosecute. In such action the plaintiffs may be designated by their official name, or the action may be brought in the name of the body in whose behalf the action is brought.

SEC. 2. Every such action shall be either:

1. On a contract made with such officers in their official capacity; or
2. To enforce a liability or a duty enjoined by law in favor of such officers, or the body represented by them; or
3. To recover a penalty or forfeiture given to such officers or body; or
4. To recover damages for an injury to their official rights or property.

SEC. 3. When an organized department of a municipal corporation is authorized by statute to sue, it shall, for purposes of the action, be deemed the real party in interest, though the corporation, of which it is the department, be the party to be ultimately benefitted by the action, or responsible for any costs incurred therein.

SEC. 4. An action may be brought against the officers, mentioned in section one, in their official capacity, or against the body they represent, either upon a contract made by such officers in their official capacity, and within the scope of their authority; or for an injury to the rights of the plaintiff, arising from some act or omission of such officers, or of the body represented by them.

SEC. 5. The actions authorized by this chapter, may be brought by or against the officers mentioned in section one upon a cause of action, which accrued during the term of their predecessors, as well as during their own term of office; and when brought may be continued by, or against their successors in office, whose names may for that purpose be substituted in the action.

SEC. 6. If judgment for the recovery of money be rendered against a county, or the board of commissioners of a county, on account of the liability of such county, and the judgment be not satisfied, or proceedings thereon stayed by appeal or otherwise, before the next regular meeting of the board of commissioners of the county, a certified copy of the docket of the judgment may be presented to the board of commissioners at such, or at any subsequent regular meeting.

SEC. 7. The board of commissioners shall thereupon cause the amount due on the judgment with interest from the time of the recovery to be added to the tax of the county for whose liability the same was recovered, and the same shall be collected as other contingent charges of the county.

Sec. 8. The treasurer of a county against which, or against whose officers a judgment has been recovered for a liability of the county, the execution of which has not been stayed upon appeal, shall upon demand and delivery to him of a certified copy of the docket of the judgment, pay the amount due thereon if there be sufficient money of the county in his hands not otherwise specifically appropriated. If he fail to do so he shall be personally liable for the amount unless the collection thereof be afterwards stayed upon appeal.

Sec. 9. Execution shall not be issued on a judgment rendered against a county or its officers without leave of the court, nor shall leave be granted until the court is satisfied that payment has been demanded of the proper county officers, as provided in the last two sections, and that the board of commissioners have wrongfully omitted to include the amount in the tax list as provided in section seven, when execution is issued, the property of the county only is liable thereon.

CHAPTER XVIII.

Of the limitation of actions.

Sec. 1. Actions can only be commenced within the periods prescribed in this chapter, after the cause of action shall have accrued except when in special cases a different limitation is prescribed by statute. But in the district court the objection that the action was not commenced within the time limited, can only be taken by answer.

Sec. 2. The period prescribed in the preceding section for the commencement of actions shall be as follows;

Within twenty years:

1. Actions for the recovery of real property, or for the recovery of the possession thereof, and no action shall be maintained for such recovery unless it appear that the plaintiff, his ancestor, predecessor or grantor, was seized or possessed of the premises in question within twenty years before the commencement of the action.

Sec. 3. *Within ten years:*

1. An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States;

2. An action upon a sealed instrument.

Sec. 4. *Within six years:*

1. An action upon a contract or liability, express or implied, excepting those mentioned in the last section;

2. An action upon a liability created by statute, other than a penalty or forfeiture;

3. An action for waste or trespass upon real property:

4. An action for taking, detaining or injuring personal property, including an action for the specific recovery thereof;

5. An action for criminal conversation or for any other injury to the person or rights of another, not hereinafter enumerated.

6. An action for relief, on the ground of fraud in cases cognizable in a court of chancery; the caue of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.

SEC. 5. *Within three years;*

1. An action against a sheriff, coroner or constable, upon a liability incurred by the doing of an act in his official capacity, and in virtue of his office; or by the omission of an official duty; including the non-payment of money collected upon an execution. But this section shall not apply to an action for an escape.

2. An action upon a statute for penalty or forfeiture where the action is given to the party aggrieved, or to such party and the territory, except where the statute imposing it prescribed a different limitation.

SEC. 6. *Within two years;*

1. An action for libel, slander, assault, battery, or false imprisonment.

2. An action upon a statute for a forfeiture or penalty to the territory.

SEC. 7. *Within one year;*

An action against a sheriff or other officer, for the escape of a prisoner arrested or imprisoned on civil process.

SEC. 8. An action upon a statute for a penalty given in the whole or in part to the person who will prosecute for the same, shall be commenced within one year after the commission of the offence; and if the action be not commenced within one year by a private party, it may be commenced within two years thereafter, in behalf of the territory by the district attorney of the county where the offence was committed.

SEC. 9. An action for relief not hereinbefore provided for, shall be commenced within ten years after the cause of action shall have accrued.

SEC. 10. In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side.

SEC. 11. The limitations prescribed in this chapter shall apply to actions brought in the name of the territory, or for its benefit, in the same manner as to actions by private parties.

SEC. 12. An action shall be deemed commenced as to each defendant, when the summons is served on him, or on a co-defendant who is a joint contractor, or otherwise united in interest with him.

SEC. 13. An attempt to commence an action shall be deemed equivalent to the commencement thereof within the meaning of this chapter, when the summons is delivered, with the intent that it shall be actually served to the sheriff, or other officer of the county in which the defendants or one of them usually or last resided; or if a corporation be defendant, to the sheriff or other officer of the county in which such corporation was established by law, or where its general business was transacted, or where it kept an office for the transaction of business. But such an attempt shall be followed by the first publication of the summons, or the service thereof within sixty days.

SEC. 14. If when the cause of action shall accrue against any person, he shall be out of the territory, or concealed, such action may be commenced within the terms herein respectively limited, after the return of such person into the territory, or the time of his concealment; and if, after such cause of action shall have accrued, such person shall depart from and reside out of this territory, or conceal himself, the time of his absence or concealment shall not be deemed or taken as any part of the time limited for the commencement of such action.

SEC. 15. If a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer for an escape be, at the time the cause of action accrued, either:

1. Within the age of twenty-one years; or
2. Insane; or
3. Imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than his natural life; or
4. A married woman;

The time of such disability shall not be a part of the time limited for the commencement of the action.

SEC. 16. If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives after the expiration of the time, and within one year from his death. If a person against whom an action may be brought, die before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his representatives after the expiration of that time, and within one year after the issuing of letters testamentary or of administration.

SEC. 17. When a person shall be an alien subject or citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the period limited for the commencement of the action.

SEC. 18. When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.

SEC. 19. If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on appeal, the plaintiff or if he die, and the cause of action survives, his heirs or representatives may commence a new action within one year after the reversal.

SEC. 20. No person shall avail himself of a disability unless it existed when his right of action accrued.

SEC. 21. When two or more disabilities shall co-exist at the time the right of action accrues, the limitation shall not attach until they all be removed.

SEC. 22. No acknowledgement or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this chapter, unless the same is contained in some writing, signed by the party to be charged thereby; but this section shall not alter the effect of any payment of principal or interest.

SEC. 23. Whenever any payment of principal or interest has been or shall be made upon an existing contract, whether it be bill of exchange, promissory note, bond or other evidence of indebtedness, if such payment be made after the same shall have become due, the limitation shall commence from the time the last payment was made.

Sec. 24. When the cause of action has arisen in another state, territory or country, between non-residents of this territory and by the laws of the state, territory or country where the cause of action arose, an action cannot be maintained thereon by reason of the lapse of time, no action shall be maintained thereon in this territory.

Sec. 25. This chapter shall not extend to actions already commenced but the statutes now in force shall be applicable to such cases according to the subject of the action, and without regard to form, nor shall any cause of action, barred by the statutes now in force, be revived by the provisions of this chapter.

CHAPTER XIX.

Qualifications and exemption of jurors.

Sec. 1. A person shall not be competent to act as a juror unless he be—

1. A citizen of the United States;
2. An elector of the county in which he is returned;
3. Over twenty-one and under sixty years of age; and
4. In possession of his mental faculties;
5. Nor shall any person be competent to act as a juror who has been convicted of a felony or a misdemeanor involving moral turpitude.

Sec. 2. A person shall be exempt from liability to act as a juror, if he be—

1. A judicial officer;
2. Any other civil officer of this territory or of the United States, whose duties at the same time are inconsistent with his attendance as a juror;
3. An attorney or counsellor;
4. A minister of the gospel, or a priest of any denomination;
5. A teacher in a college, academy or school;
6. A practising physician;
7. An officer, keeper or an attendant of an alms-house, poor-house, hospital, asylum or other charitable institution, created by or under the laws of this territory;
8. The captain, mate, or other officer or any person employed on board of a steamer, vessel or boat navigating the waters of this territory.

Sec. 3. A person may be excused from acting as a juror, when for any reason his interests or those of the public, will be materially injured by his attendance, when his own health or the sickness or death of a member of his family requires his absence.

CHAPTER XX.

Manner of forming the jury list.

Sec. 1. The county commissioners of each county shall at their first session of each year, make from the assessment roll of the county, a list containing the names of persons to serve as jurors until new lists be returned.

SEC. 2. In preparing the jury list the names of those persons only shall be selected who are known or believed to be possessed of the qualifications prescribed in this act, and not entitled to exemption.

SEC. 3. The jury list shall contain the names of two hundred persons, if there are that number of qualified jurors within the county. They shall be apportioned among the different sections of the county according to the number of persons on the assessment roll.

SEC. 4. The jury lists shall each contain the christian and surname at length, and the place of residence and occupation of each person named therein, and shall be certified by the county commissioners and filed with the clerk of the county.

SEC. 5. The county clerk shall keep in his office a sufficient box, in which he shall prepare and deposit separate ballots, containing the names of all the jurors on the list. Each ballot shall be folded so that the name cannot be seen.

CHAPTER XXI.

Manner of drawing and summoning jurors.

SEC. 1. The county clerk shall call to his assistance the sheriff or his deputy, or a justice of the peace, and proceed to draw the ballots as hereinafter provided.

SEC. 2. The drawing shall take place at the office of the county clerk, not less than ten nor more than twenty days before the holding of such regular term of court.

SEC. 3. The drawing shall be conducted as follows:

1. The clerk shall shake the box containing the ballots so as to mix them as much as possible;
2. He shall then draw out of the box twenty-three ballots which said twenty-three ballots first drawn shall constitute the grand jury;
3. A minute of the drawing shall be kept, in which shall be entered the name contained on every ballot drawn before any other shall be drawn.

SEC. 4. After the grand jury is completed, the clerk shall proceed to draw twenty-four ballots, which shall constitute the trial jury.

SEC. 5. The minutes of the drawing shall then be signed by the clerk and the attending officer, and forthwith filed in the clerk's office.

SEC. 6. A list of the names of persons drawn as grand jurors, and a list of the names of persons drawn as trial jurors, shall then be made, and certified by the clerk and delivered to the sheriff of the county without delay.

SEC. 7. At least five days before the opening of the court, the sheriff shall summon the persons named in the lists delivered to him, to attend the court by giving written notice to each of them personally, or by leaving the same at his place of residence, with some person of suitable age and discretion.

SEC. 8. The sheriff shall also return the lists to the court at its opening, specifying the persons summoned, and the manner in which each was summoned.

SEC. 9. Every person who shall fail to appear when lawfully summoned as a grand or petit juror, without having a reasonable excuse, shall be considered as being guilty of a contempt, and shall be fined by the court in any sum not exceeding twenty dollars, for the use of the county, unless good cause be shown for such default at or before the next term of said court; and it shall be the duty of the said clerk, to issue a summons against such delinquent, when such person shall not come in without process to show cause at the next term of court why he or they should not be fined for such contempt; *Provided* that the oath or affirmation of any such delinquent shall at all times be received as evidence in his favor.

SEC. 10. When of the persons summoned as grand jurors, sixteen or any number over shall attend, they shall constitute the grand jury. If any number less than sixteen shall attend, they shall be placed upon the grand jury, and the court shall order the sheriff to summon from the body of the county a sufficient number of persons to make up the deficiency. If the grand jury shall be diminished by challenge, or disqualifications, the panel may be filled in like manner.

CHAPTER XXII.

Formation of trial juries.

SEC. 1. The clerk shall prepare separate folded ballots, containing the names of the petit or trial juries, and deposit them in a box. He shall then draw from the box twelve names, and the persons drawn shall form a jury unless some are rejected by challenge, disqualification, or otherwise, in which case the clerk shall continue to draw until the panel is complete.

SEC. 2. If necessary, the court may order the sheriff to summon persons from the body of the county to fill up the trial jury.

SEC. 3. It shall be the duty of the clerk of the court at the eve of each term of said court, to make out a certificate to each grand and petit juror, certifying the number of days of attendance, and amount of compensation due to each one; which certificate shall be presented to the board of county commissioners and allowed as other demands against said county; *Provided* that no juror shall be paid out of the county treasury for any day's attendance as a juror in the district court of the territory, for which he may have received, or be entitled to receive pay as a juror of the district court of the United States.

SEC. 4. All grand and petit jurors shall be privileged from arrest, in all cases, except for breach of the peace, treason, felony, and other criminal offences, during their attendance at said court, going to and returning from the same; *Provided* that when any grand jury shall make presentment of one of their own body, he shall be liable to be proceeded against in the usual form.

CHAPTER XXIII.

Of the court of chancery.

SEC. 1. The several district courts of this territory, as courts of equity, possessing the usual powers and authority of such courts, shall have original jurisdiction in all matters in chancery, in which a plain, adequate and complete remedy cannot be had at law.

SEC. 2. The stated terms of the courts of chancery shall be the same as those of the courts, sitting as courts of law jurisdiction, and each of said courts shall have power to appoint as many special terms as they shall deem proper, and said courts shall have power to hear and determine any suit or matter depending therein or any application or motion pending before the same, and make any order in vacation with the like effect as if the same were done at a stated or special term.

SEC. 3. Suits in equity concerning real property or when the same may be affected, shall be brought in the conuty within which such real property or a greater part thereof is situated.

SEC. 4. In other cases such suit shall be brought in the county within which one or more of the complainants or defendants reside at the commencement thereof. If none of the parties reside in the territory, such suit may be commenced in any county which the complainant may designate in his bill.

SEC. 5. All applications to the chancery side of the said court, except motions, shall be by bill or petition, stating the nature and grounds of the complainant's claim, and shall be filed in the office of the clerk of such court.

SEC. 6. The complainant may insert in his bill as many defendants as he may think proper, though they claim under different titles; but if any of the defendants disclaim, the complainant shall pay costs unless the court shall for special reasons decree otherwise.

SEC. 7. In suits for the payment or recovery of money, set-off shall be allowed in the same manner and with the like effect as in actions at law.

SEC. 8. The bill shall not contain any pretenses or charges of combinations or anything more than the name of the court, the name of the county in which the suit is brought, the names of the parties complainant and defendant, a statement of the facts constituting the cause of action in ordinary and concise language without any unnecessary repetition, and a prayer for the relief, to which the complainant supposes himself entitled, including the prayer for process.

SEC. 9. A bill of discovery may be filed and the defendant shall be compelled to answer such bill, when he is charged with having suffered or confessed in favor of another person, any judgment purporting to be for a sum or debt due, when in fact nothing or only a part of the sum mentioned in such judgment is due, with intent to defraud the just creditors of such defendant, or to place his property out of the reach of his creditors, or to hold the some on same secret trust or confidence, or for the benefit of such defendant.

SEC. 10. No answer made to any bill, filed under the last section, shall be read in evidence against the defendant on the trial of any indictment for the fraud charged in the bill.

SEC. 11. Upon the filing of the bill the clerk shall issue a subpena, returnable to the next term of the court and directed to the sheriff of the county in which the defendant resides, requiring him to summon the defendant to appear and answer the bill.

SEC. 12. When there are several defendants residing in different counties, a separate subpena shall be issued to each county, including all the defendants residing therein.

SEC. 13. Every subpena or process for appearance shall be served on the person to whom it is directed, by giving him a copy thereof, or if he be not found, by leaving a copy with some white person of the family above the age of fourteen years at the dwelling house or usual place of abode of the defendant.

SEC. 14. A copy of the bill shall accompany the subpena and be delivered to the defendant, or left at the dwelling house or place of abode of the defendant. If there be more than one defendant, such copy shall be given to the defendant, who shall be first served with the subpena.

SEC. 15. If any complainant or any person for him, shall file with his bill an affidavit, stating that part or all the defendants are non-residents of the territory, the clerk shall make an order directed to the non-residents, notifying them of the commencement of the suit, and stating briefly the object and general nature of the bill, and requiring them to appear on a day to be named therein, (allowing sufficient time for publication) to appear and answer the bill, or that the same will be taken as confessed.

SEC. 16. When a subpena shall be issued against any defendant, and the sheriff to whom it is directed, shall make return that the defendant connot be found, the court being first satisfied that process cannot be served, shall make an order as is required in the preceding section in the case of non-resident defendants.

SEC. 17. If any complainant shall allege in his bill that there are, or that he verily believes there are persons interested in the subject matter of the bill, whose names he cannot insert therein because they are unknown to him, and shall describe the interest of such persons, and how derived so far as his knowledge extends, and shall verify such allegations by affidavit to his bill annexed, the court, or in vacation, the judge or clerk thereof, shall make an order as in case of non-residents, reciting moreover all allegations in relation to the interest of such unknown parties.

SEC. 18. Every order against non-resident, absent, or unknown defendants, shall be published in some newspaper printed in this territory, for eight weeks successively, the last insertion to be at least four weeks before the commencement of the term at which the defendants are required to appear.

SEC. 19. The complainant may cause a copy of the bill with a notice of the suit, to be delivered to any known defendant residing or being out of this territory, at any place within the United States or their territories, two months before the commencement of the term at which such defendant is required to appear.

SEC. 20. Such delivery may be made by any white person above the age of twenty-one years, who is a competent witness in the cause, and being proved by the affidavit or deposition of such person, shall be as effectual as the service of the subpena, and the delivery of a copy of the bill in this territory.

SEC. 21. When there are several defendants, some of whom have not been served with process, and do not appear, the complainant may proceed against those, if any, who do appear, or are served with process, and dismiss his bill as to the others, unless the court for good cause shall otherwise direct; or he may continue the cause, and proceed to bring in the other defendants by process or publication, as the case may require.

SEC. 22. If the subpena shall have been served thirty days before the return day thereof, the defendant shall file his plea, demurrer or answer to the bill on or before the third day of the term at which the process is returnable. If it shall have been served less than thirty days before such return day, the defendant shall file his plea, demurrer or answer within thirty days next after such return day. In either case the court may for just cause, allow the defendant further time to file the same.

SEC. 23. If the defendant shall not file his plea, demurrer or answer within the time prescribed by the last section, the bill may be taken as confessed, and the court may thereupon, at its discretion, render a decree thereon, or order the complainant to prove the allegations in his bill, or examine him on oath, touching such allegations, and such decree shall then be made, as the court shall deem just and equitable.

SEC. 24. When the complainant conceives the plea of the defendant to be good, though not true, he may reply to and take issue thereon, and proceed as in case of an answer.

SEC. 25. If the defendant file a demurrer, and answer, the complainant shall not proceed on the answer, until the demurrer has been argued and disposed of.

SEC. 26. If the plea or demurrer be overruled, no other plea or demurrer shall be thereafter received, but in such case the defendant shall file his answer to the complainant's bill in such time as the court may direct, and if he fail to do so, the bill shall be taken as confessed, and the court shall thereupon proceed as directed in section twenty-two

SEC. 27. If the plea or demurrer of the defendant be allowed, the complainant shall pay costs; and if overruled, the defendant shall pay them.

SEC. 28. The defendant shall answer fully all the allegations in the bill, except such as are not required to be answered by reason of exceptions, plea or demurrer thereto allowed; and the answer shall be verified by oath or affirmation, which may be administered before any person authorized by law to administer oaths. A copy of such answer shall be delivered to his complainant or his solicitor.

SEC. 29. The defendant, after he shall have filed his answer, may exhibit interrogations to the complainant, which shall be answered by him on oath or affirmation, unless excepted to, and the exception allowed; and if the complainant shall not answer such interrogatories within the time appointed by the court, his bill may be dismissed with costs.

SEC. 30. The answer of the complainant to such interrogatories, shall be evidence in the cause in the same manner as the answer of the defendant.

SEC. 31. The complainant shall file his exceptions to the answer or a replication within ten days after the time limited for filing the answer, if such answer be filed in time.

SEC. 32. When exceptions shall be filed to an answer, the court may refer the same to a master in chancery, who shall decide and report upon them within thirty days after such reference, and an appeal to the court from such decision shall in all cases be allowed, or the court itself may decide upon the sufficiency of the answer without such reference.

SEC. 33. The complainant if his exceptions be overruled, shall pay costs to the defendant; and the defendant, if his answer be adjudged insufficient, shall pay costs to the complainant.

SEC. 34. When the answer shall be adjudged insufficient, the defendant shall file a second or further answer, within ten days after such adjudication or within such further time as the court may direct; and on failure thereof, the bill shall be taken as confessed and such proceedings shall be had thereon as if the first answer had not been filed within the limited time.

SEC. 35. If such second answer be adjudged insufficient, the defendant shall pay double costs, and in such case further time to answer shall not be allowed but the bill shall be taken as confessed, and such proceedings shall be had thereon as if the first answer had not been filed in due time, or the defendant may be examined on interrogatories and committed until he shall answer and pay costs.

SEC. 36. If a cross-bill be filed by the defendant he shall put in his answer to the complainant's bill, before the complainant shall be required to put in his answer to such cross-bill.

SEC. 37. All rules, common or special, by consent of the parties or their solicitors, shall be entered of course with the clerk, whether in term time or vacation.

SEC. 38. All proper amendments shall be made with or without costs, and on such equitable terms as the court may direct; and the court shall have the same power to allow amendments or the correction of mistakes, supply omissions or defects, extend the time within which an act may be done, and relieve a party from a judgment, decree, order or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect, and to allow any proceeding to be conformed to the provisions of the statute as in actions at law.

SEC. 39. Every cause in a court of chancery shall be deemed to be at issue on filing a replication on the expiration of the time therefor, if none be filed, nor further time allowed, and it shall not be necessary to issue a subpena, or enter a rule to rejoin.

SEC. 40. If there be an issue of fact which shall render the intervention of a jury necessary, the court may direct an issue for the trial of the same, and the verdict shall be entered on record, and may be used on the hearing of the cause. In other cases, the court may order a reference to take and report the proofs and evidence in the cause or take them in open court in term time or in vacation.

SEC. 41. Depositions may be taken in cases in chancery in the same manner as is provided in actions at law; and the rules of evidence shall be the same in chancery as at law.

SEC. 42. If the complainant shall not attend at the time appointed for the hearing of the cause, his bill may be dismissed with costs.

SEC. 43. If the defendant shall not attend at the time appointed for the hearing of the cause, the bill, answer, replication, documents and proofs shall be read, the witnesses examined, and the court shall thereupon make such decree as it shall deem equitable and just, or dismiss the complainant's bill.

SEC. 44. In cases where a decree shall be made upon any bill in equity against an absent defendant, the court, before issuing process to compel the performance of such decree against such absent defendant, may require the complainant to give bond with such security and in such sum as it may direct, to abide such decree or order touching the restitution of the property of such absent defendant, or the repayment of any sum of money which the complainant may receive by virtue of such decree, but which shall afterwards be made to appear as hereinafter provided not to have been due to him; and in case no security shall be given, no process or execution shall issue to compel the performance of the decree so made against such absent defendant; but the property of such absent defendant may, by order of the court, be sequestered under the direction of the court, to abide such order as it may think just and proper respecting the same.

SEC. 45. In case any such absent defendant, against whom a decree shall be made, his heirs, devisees, executors, administrators or assigns, as the case may require, shall, within one year after notice be given to him of such decree, or within three years after such decree shall have been made, if no notice as aforesaid shall have been given, petition the court touching the matter of such decree, and pay or secure, or cause to be paid, such costs as the court may think reasonable to order and direct; then, and in such case, the person aforesaid petitioning may be permitted to appear and answer the complainant's bill, and thereupon such proceedings shall be had, as if such absent defendant had appeared in due season, and no decree had been made; or such absent defendant may, within the times aforesaid, file his bill of review in the said court for an account and settlement of the amount which was really due, and owing to the complainant at the time of the decree, and to compel the complainant to refund what he may wrongfully have recovered and received, together with the interest from the time of the receipt thereof, with costs of suit, the former decree against such absent defendant notwithstanding; but in case no petition shall be presented, or bill filed as before provided for, within one year from the time of notice as aforesaid shall be given, due proof thereof being made, or within three years from the decree, such decree shall be adjudged to be confirmed, which confirmation shall have relation to the time of making such decree; and the decree shall be executed and performed as in cases where the defendant had duly appeared.

SEC. 46. The title to any real or personal property which shall have passed into the hands of a real *bona fide* purchaser, by virtue of the former decree shall not be affected by any proceedings under the last section.

SEC. 47. A final decree of a court of chancery shall have the same operaton, force and effect from the time of signing the same as a judgment at law.

SEC. 48. When a decree shall be made for a conveyance, release, or acquittance in any court of chancery, and the party against whom any such decree shall pass, fails to comply therewith by the time appointed, such decree shall be considered and taken in all courts of law and equity, to have the same operation and effect, and be as available as if the conveyance, release or acquittal had been executed conformably to such decree.

SEC. 49. A court of chancery, or a judge thereof in vacation, shall have power to enforce its decrees, orders and injunctions by attachment, sequestration, or by such final process against the real or personal property, or against the person of any defendant as may be had upon a judgment at law; and such process shall be obeyed, executed and returned by the sheriff or other officer to whom the same shall be directed in like manner, and under the same penalties as is provided in cases of process issuing from a court of law.

SEC. 50. When the cause of action shall survive, no suit in chancery shall abate by the death of one or more of the complainants or defendants; but upon satisfactory suggestion to the court, the cause shall proceed in favor of or against the surviving parties.

SEC. 51. When one or more of the complainants or defendants shall die, and the cause of action shall not survive, the suit shall abate only as to the person or persons so dying, and the surviving parties may proceed without reviving the suit.

SEC. 52. No bill of revivor shall be be necessary to revive a suit against the representatives of a deceased defendant, but the court may, by order, direct the same to stand revived upon the petition of the complainant.

SEC. 53. A copy of such order shall be served upon the representatives against whom the revival is ordered, who shall be allowed thirty days after service, or such further time as the court may allow to appear and answer, or disclaim.

SEC. 54. If they shall not within the time prescribed in the last section, appear and answer or disclaim, the court, upon due proof of the service of such order, may cause their appearance to be entered, and in such case the answer of the deceased party shall be deemed the answer of such representatives.

SEC. 55. If no answer have been filed by the deceased party, the court may order the bill to be taken as confessed against such representatives, or compel them to answer by attachment or otherwise.

SEC. 56. If a female party to a suit marry at any time before a final decree, her husband may on his application be made a complainant or defendant with her, on the order of the court, in which the suit is pending, or the judge thereof, to be granted on due proof of the marriage, and after notice to such female party, and the other parties to the suit.

SEC. 57. Such husband may also be made a party with his wife, on the application of any other party to the suit, by petition upon proof of the marriage, and notice to such husband and wife, and the other parties to the suit. In such cases the husband may contest all facts in the same manner as if he had originally been made a party.

Writs of ne exeat.

SEC. 58. The district court, as a court of chancery, or any judge thereof in vacation, may grant writs of *ne exeat*, to prevent any person from going out of the territory, until he shall give security.

SEC. 59. No writ of *ne exeat* shall be granted but upon bill or petition filed, and affidavit of the complainant, or some other person of the truth thereof; and the court or judge granting the writ shall direct to be endorsed thereon, the amount of the security to be given to the defendant.

SEC. 60. If the defendant shall, by answer or otherwise, satisfy the court or judge granting such writ of *ne exeat*, that there is no reason for his restraint, or shall give security for the performance of whatever decree may be made in the premises, the writ may be discharged.

Of the granting of injunctions.

SEC. 61. No writ of injunction shall be issued in any case, but upon bill or petitition filed, verified by the oath of the person applying for such injunction, or by some competent witness.

SEC. 62. Writs of injunction may be granted by the court or judge thereof in vacation, and the proceedings had thereon shall be the same as in the courts of equity.

SEC. 63. If the person against whom an injunction to stay waste shall be allowed, after the service and notice thereof, shall commit, direct or suffer to be committed, any waste or destruction upon the premises, contrary to the injunction, the court or the judge thereof in vacation, or any judge of the supreme court, on motion and affidavit, may award an attachment for contempt against the person charged with disobedience to the injunction.

SEC. 64. If the person so offending be brought before the court or judge, and it shall appear that such waste or destruction has been committed, the court or judge may order the defendant in their discretion, to pay the clerk of the court a fine not exceeding two hundred dollars, for the use of the county, and to make immediate restitution to the party injured, or in default thereof, to order such defendant to be committed to prison until he shall fully comply with such order, or be otherwise legally discharged.

SEC. 65. No injunction shall operate to stay proceedings at law, before or after judgment, until the party obtaining the same shall give a bond or undertaking with sufficient security, to be approved by the clerk of the court in the amount required by the court or judge granting such injunction for the payment of all moneys and costs due, or to become due from the complainant in such action, or judgment at law, and all moneys and costs that may be decreed against him in case such injunction shall be dissolved.

SEC. 66. In all cases where an injunction shall be allowed to stay proceedings at law in an action for the recovery of money only, upon the dissolution of the injunction and dismissal of the bill, the court shall render a decree in favor of the defendant, (plaintiff at law) for the debt, or damages, interest and costs accruing in chancery, together with five per centum penalty on the amount of debt or damages and interest.

SEC. 67. When a sheriff or other officer has received the whole or any part of the money for the collection of which an execution has issued, and the person against whom such execution has issued, his executors or administrators shall obtain an injunction to stay the proceedings under such execution, the sheriff or other officer shall repay to the person against whom such execution issued, his executors, administrators or attorney of record, the money so received, or such part thereof as may be enjoined, retaining sufficient to pay the costs of the collection by execution; *Provided* the money has not been paid over to the plaintiff, his executors, administrators or attorney of record.

Of the foreclosure of mortgages.

SEC. 68. Whenever a bill shall be filed for the foreclosure or satisfaction of a mortgage, the court shall have power to decree a sale of the mortgaged premises, or such part thereof as may be sufficient to discharge the amount due on the mortgage and costs of suit.

SEC. 69. When a bill shall be filed for the foreclosure or satisfaction of a mortgage, the court shall have power not only to decree and compel the delivery of the possession of the premises to the purchaser thereof, but on the coming in of the report of sale, the court shall have power to decree and direct the payment by the mortgagor of any balance of the mortgage debt that may remain unsatisfied after a sale of the premises, in the cases in which such balance is recoverable at law; and for that purpose may issue the necessary executions, as in other cases, against other property of the mortgagor.

SEC. 70. After such bill shall be filed, while the same is pending, and after a decree rendered thereon, no proceedings whatever shall be had at law for the recovery of the debt secured by the mortgage, or any part thereof, unless authorized by the court.

SEC. 71. If the mortgage debt be secured by the obligation or other evidence of debt of any person other than the mortgagor, the complainant may make such other person a party to the bill, and the court may decree payment of the balance of such debt remaining unsatisfied after a sale of the mortgaged premises, as well against such other person as the mortgagor, and may enforce such decree as in other cases.

SEC. 72. Upon filing a bill for the foreclosure or satisfaction of a mortgage, the complainant shall state whether any proceedings have been had at law for the recovery of the debt secured thereby, or any part thereof, and whether such debt, or any part thereof has been collected or paid.

SEC. 73. If it appear that any judgment has been obtained in a suit at law for the moneys demanded by such bill, or any part thereof, no proceedings shall be had in such case, unless to an execution against the property of the defendant in such judgment, the sheriff shall have returned that the execution is unsatisfied in whole or in part, and that the defendant has no property whereof to satisfy such execution, except the mortgaged premises.

SEC. 74. All sales of mortgaged premises under the decree of a court of chancery, shall be made by the sheriff in the county where the premises, or some part of them are situated, unless otherwise directed in the bill of sale.

SEC. 75. Sales of mortgaged premises shall be made by the sheriff or other officer in the same manner as other sales of real property on execution, unless otherwise directed by the court; and the mortgagor, or any lien creditor shall have the same rights of redemption after a sale.

SEC. 76. After the right of redemption shall have passed, deeds shall be executed by the sheriff or other officer, which shall vest in the purchaser the same estate, and no other or greater than would have vested in the mortgagee if the equity of redemption had been foreclosed; and such deeds shall be as valid as if executed by the mortgagor and mortgagee, and shall be an entire bar against either of them, and against all parties to the suit in which the decree for such sale was made, and against their heirs respectively, and all persons claiming under such heirs.

SEC. 77. The proceeds of every sale made under a decree in chancery, shall be applied to the discharge of the debt adjudged by such court to be due, and of the costs awarded; and if there be any surplus, it shall be brought into court for the use of the defendant, or of the person entitled thereto, subject to the order of the court.

SEC. 78. If such surplus, or any part thereof, shall remain in the said court for the term of three months without being applied for, the district judge may direct the same to be put out at interest, subject to the order of the court for the benefit of the defendant, his representatives or assigns, to be paid to them by the order of the court.

SEC. 79. Whenever a bill shall be filed for the satisfaction or foreclosure of any mortgage upon which there shall be due any interest, or any portion or instalment of the principal, and there shall be other portions or instalments to become due subsequently, the bill shall be dismissed, upon the defendant's bringing into court, at any time before the decree of sale, the principal and interest, with costs.

SEC. 80. If after a decree of sale entered against a defendant in such case, he shall bring into court the principal and interests due, with costs, the proceedings in the suit shall be stayed, but the court shall enter a decree of foreclosure and sale, to be enforced by a further order of the court upon a subsequent default in the payment of any portion or instalment of the principal, or any interest thereafter to grow due.

SEC. 81. If the defendant shall not bring into court the amount due, with costs, or if for any other cause a decree shall pass for the complainant, the court may direct a reference to a master to ascertain and report the situation of the mortgaged premises, or may determine the same on oral or other testimony; and if it shall appear that the same can be sold in parcels without injury to the interests of the parties, the decree shall direct so much of the mortgaged premises to be sold as will be sufficient to pay the amount then due on the mortgage, with costs; and such decree shall remain as security for any subsequent default.

SEC. 82. If, in the case mentioned in the preceding section, there shall be any default subsequent to such decree, in the payment of any portion or instalment of the principal, or of any interest due upon such mortgage, the court may, upon petition of the complainant, by a further order founded upon such first decree, direct a sale of so much of the mortgage premises to be made under such decree as will be sufficient to satisfy the amount so due, with the costs of such petition, and the subsequent proceedings thereon; and the same proceedings may be had as often as a default shall happen.

Sec. 83. If in any of the foregoing cases, it shall appear to the court that the mortgaged premises are so situated that a sale of the whole will be most beneficial to the parties, the decree shall in the first instance, be entered for a sale of the whole premises accordingly.

Sec. 84. In such case the proceeds of such sale shall be applied as well to the interest portion or instalment of the principal due, as towards the whole, or residue of the sum secured by such mortgage and not due and payable at the time of such sale; and if such residue do not bear interest, then the court may direct the same to be paid, with a deduction of the legal interest for the time during which such residue shall not be due and payable, or the court may direct the balance of the proceeds of such sale, after paying the sum due with costs, to be put out at interest for the benefit of the complainant, to be paid to him as the instalments or portions of the principal, or the interest may become due, and the surplus for the benefit of the defendant, his representatives or assigns, to be paid to them on the order of the court.

Miscellaneous provisions.

Sec. 85. Whenever it shall be deemed necessary the court may appoint a master in chancery; such master shall be sworn and give bond if required, for the faithful performance of the duties assigned him, and shall have power to administer oaths in any proceeding before him, and shall receive for his services such reasonable compensation as the court may allow.

Sec. 86. No receiver shall be appointed in any cause commenced or pending in chancery, until after notice is given to the adverse party.

Sec. 87. It shall be lawful for the supreme court from time to time, to make, alter or amend, or revoke any rule of practice, so as to obviate doubts, advance justice and expedite suits in the courts of chancery, so that the same be not contrary to the provisions of any statute.

Sec. 88. When any person being complainant or defendant, shall think himself aggrieved by the final order or decree of a judge of the district court, setting as a court of chancery, such person may enter an appeal within one year to the supreme court from such order or decree; and the provisions of law regulating appeals from the district to the supreme court, in actions at law shall in all respects as far as they are applicable, apply to suits in chancery.

COMMON SCHOOLS.

CHAPTER I.

SEC. 1. The principal of all moneys accruing to this territory from the sale of any land heretofore given, or which may hereafter be given by the congress of the United States for school purposes, shall constitute an irreducible fund; the interest accruing from which shall be annually divided among all the school districts in the territory, proportionally to the number of children or youth in each between the ages of four and twenty-one years, for the support of common schools in said districts, and for no other use or purpose whatever.

SEC. 2. For the purpose of establishing and maintaining common schools, it shall be the duty of the county commissioners of each county to lay an annual tax of two mills on a dollar, on all the taxable property of the county, as shown by the assessment rolls made by the the county assessors for the same year, and to include the same in their warrant to the collector, and the said collector shall proceed to collect the said tax in the same manner as the other county tax is collected; and the said money so collected shall be paid over to the county treasurer to be appropriated for the hire of school teachers in the several school districts, to be drawn in the manner hereinafter prescribed.

SEC. 3. For the further support of common schools, there shall be set apart by the county treasurer, all money paid into the county treasury, arising from all fines for a breach of any penal laws of this territory. Such moneys shall be paid into the county treasury, and be added to the yearly school fund raised by tax in each county, and divided in the same manner.

CHAPTER II.

County superintendents.

SEC. 1. There shall be elected by the legal voters of the respective counties at the annual elections, a county superintendent of common schools for each county, who shall hold his office for the term of three years, and until his successor is duly qualified.

SEC. 2. The superintendent shall qualify within ten days after notice of his election, by taking an oath faithfully to discharge the duties of his office, and to the best of his ability promote the interest of education within his county; which oath shall be in writing and placed on file in the county clerk's office.

SEC. 3. It shall be the duty of the superintendent to divide such portion of his county as shall be inhabited, into convenient school districts; to define the boundaries and numbers; and to prepare and keep in his office a map of the districts of the county upon which the lines and boundaries of each district shall be clearly defined; he shall lay off new districts, or divide old ones when the public good shall require it.

SEC. 4. Whenever any school district shall be formed by the superintendent, it shall be his duty to prepare a notice in writing of the establishment of such district, describing its boundaries, and to deliver the same to some taxable inhabitant of such district, who shall have asked for the formation of the same. It shall be the duty of said inhabitant, within two weeks after the receipt of such notice, to notify the other inhabitants of the district, of the time and place of the first district meeting, which time and place he shall fix by written notices, and which shall be posted up in three public places in the district, at least ten days previous to the time of meeting. In case the inhabitants fail to attend in sufficient numbers to do business as hereafter directed, notice may be renewed at such times as may be thought proper.

SEC. 5. It shall be the duty of the superintendent to examine all persons who wish to become teachers in his county; he shall examine them in orthography, reading, writing, arithmetic, English grammar and geography; and if he be of the opinion that the person examined is competent to teach said branches, and that he or she is of good moral character, he shall give such person a certificate, certifying that he or she is qualified to teach a common school in said county; such certificate shall be for the term of one year only, and may be revoked sooner by the superintendent for good cause.

SEC. 6. The superintendent shall visit all the schools taught in his county by a qualified teacher at least once a year; he shall give such information and encouragement as he may think necessary, and endeavor to promote the introduction of a good and uniform system of school books throughout the county.

SEC. 7. It shall be the duty of the superintendent to receive the district reports hereinafter provided for, and keep them on file in his office; and he shall at least ten days before the first Friday in November of each year, make out from the district reports, a statement of the number of the scholars in the county; the number of school libraries; the number of school houses; the number of districts; in how many districts a school has been kept the past year; what school books are principally used; what proportion of all the scholars in the county have attended school for the past year; and the amount of money paid to teachers. This statement, together with such other information and suggestions as he may deem important to the cause of education, he shall file in his office, and may if convenient, publish it in some newspaper in this territory.

SEC. 8. It shall be the duty of the superintendent, at least fifteen days before the first Friday in November of each year, to make an apportionment of the school fund in the county treasury, among the several school districts in their respective counties, in proportion to the number of persons in the district over the age of four, and under twenty-one years, and certify the amount due to each district, which shall be drawn as hereafter directed; and he shall forthwith notify the clerks of the school districts, of the amount due their respective districts.

SEC. 9. When the districts shall have complied with the law, as hereafter directed, it shall be the duty of the superintendent to issue orders on the county treasury in favor of the clerks of the districts, for the amount of the school funds appropriated to each; on the presentation of which order, the treasurer of the county shall pay over to the clerks of the districts, all moneys due the respective districts; and the clerks shall endorse on said order a receipt for so much as shall be paid thereon, and they shall also sign a duplicate receipt, which shall be deposited with the superintendent, who shall credit the treasury of the county therewith, and charge the same to the proper district.

SEC. 10. The superintendent shall, in the name of the county, collect, or cause to be collected, all moneys due the school fund from fines, or from any other source in his county; and until the legislature shall make some provision for the disposal of the school lands given by congress to the territory for school purposes, it shall be the duty of the superintendent to preserve said lands from injury and trespass; and when it shall come to his knowledge that any trespass has been committed on such lands, he shall make complaint of the same before the grand jury of the proper county, at the first regular term of court after he has obtained a knowledge of such trespass; and all fines and other moneys thus collected shall be paid over to the treasurer of the county for the use of common schools, and divided in said county in the same manner as the other school funds.

SEC. 11. Any person trespassing upon or injuring the school lands, as mentioned in the preceding section, shall be liable to be indicted for the same, and, upon conviction, shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars.

SEC. 12. The said superintendent shall be allowed out of the county treasury, *in compensation for his services*, the sum of one hundred dollars a year. The county commissioners may, in their discretion, if they think the services rendered demand it, increase his salary to any sum, not exceeding five hundred dollars a year.

CHAPTER III.

School meetings.

SEC. 1. A school meeting may be called at any time for the purpose of organizing a new district, as provided in section four, under the title of county superintendent. No number less than five legal voters shall constitute a quorum, to do business in any district meeting.

SEC. 2. Such school meeting shall have power to do all necessary business the same as the regular annual school meeting would have.

SEC. 3. Such meeting when assembled, shall organize by the appointment of a chairman and secretary. It shall then proceed by ballot to elect three directors. Of those so elected, the person having the highest number of votes, shall hold his office for the term of three years, and the person having the next highest number shall hold his office for two years, and the person next highest one year, and each shall continue in office until his successor is elected and qualified. In case two or more persons of those so elected receive an equal number of votes, the duration of their term of office shall be determined by lot, in presence of the chairman and secretary.

SEC. 4. The term of office of a director not elected at the regular annual meeting, shall continue for the term of one, two or three years, as he may have been elected, from the next annual school meeting, unless such director shall be elected to fill vacancy, in which case he shall continue in office for the unexpired term. So that at every annual school meeting after the first, there shall be elected one school director for the term of three years.

SEC. 5. The directors shall qualify within two days after their election, by taking an oath or affirmation faithfully to discharge the duties of the office, to the best of their abilities; and to promote the interest of education within their district. This oath shall be in writing and filed with the clerk of the district.

SEC. 6. It shall be the duty of the directors of every school district:

1. To call special meetings of the district whenever they shall deem it necessary;

2. To make out a tax list of every district tax containing the names of the taxable inhabitants in the district, and the amount of tax payable by each inhabitant set opposite his name;

3. To annex to such tax list a warrant directed to the clerk of the district for the collection of the sums in such list mentioned, including five per cent. for the fees of said clerk;

4. To purchase or lease a site for the district school house as designated by a meeting of the district, and to build, hire or purchase, keep in repair and furnish such school house with necessary fuel and appendages out of the funds collected and paid to the clerk for such purpose, and to have the custody and safe keeping of the district school house;

5. To contract with and employ teachers; *Provided* that no teacher shall be employed who shall not produce a certificate from the county superintendent as is required by law, of good moral character and qualification to teach a district school;

6. To give orders to the teachers on the district clerk for their wages.

SEC. 7. Any two of said directors shall constitute a quorum to do business.

SEC. 8. It shall be the duty of the directors to visit and examine the school or schools of their respective districts, at least twice in each term, they shall endeavor to procure the introduction of a good and uniform system of school books in their district; and when the teacher experiences difficulty in the government of the school, it shall be his duty to refer the cases of disorderly scholars to the directors, who shall decide how such scholars shall be punished, or whether they shall be dismissed from school.

Clerks.

SEC. 9. The first school meeting shall also elect a district clerk, who shall continue in office for the term of three years. He shall qualify within ten days after his election, by giving bond to the district directors in such sum as they may require, that he shall well and truly perform the duties of his office, and pay over all moneys coming into his hands by virtue of his office as by law directed. If a clerk be elected to fill a vacancy, he shall continue in office for the unexpired term; and if elected at the first meeting, not being the regular annual meeting, he shall continue in office three years from the next annual meeting.

SEC. 10. It shall be the duty of the clerk of each district:

1. To record the proceedings of his district in a book, to be provided for that purpose by the district;

2. To give notice of annual or special meetings;

3. To procure a list of all persons in the district between the ages of four and twenty-one years;

4. To collect all district taxes which he shall be required by the warrant from the directors to collect within the time limited in each warrant for its return; and he shall have the same authority to enforce the collection of such tax as the county collector has for collecting the county tax, and he shall be allowed five per cent. for collecting;

5. To retain a copy of all reports made to the county superintendent relating to the affairs of the district.

SEC. 11.* It shall be the duty of the clerk to furnish the county superintendent at least twenty days before the first Friday in November of each year, a report containing the number of scholars in his district over four and under twenty-one years of age; how long a school has been kept in his district the past year; what school books are principally used; what proportion of the scholars in the district have attended school; and the amount of money paid to teachers.

SEC. 12. The clerk of each district shall, at the close of each year of his office, make out in writing a just and true account of all moneys received by him for the use of the district, and the manner in which the same shall have been expended, which account shall be read at the annual district meeting. The clerk shall pay over all moneys remaining in his hands belonging to the district to his successor, when his successor has legally qualified, and upon a refusal or neglect so to do, the directors shall forthwith bring suit upon his bond.

SEC. 13. There shall be an annual school meeting held in each district upon the first Friday in November; and notices of all annual or special meetings shall be in writing, signed by the directors or the clerk of the district, and shall state the object for which the meeting is called; and shall be posted up in three public places in the district, at least six days previous to the holding of such meeting.

SEC. 14. Every inhabitant over the age of twenty-one years, who shall have resided in any school district for three months immediately preceding any district meeting, and who shall have paid, or be liable to pay any tax except road tax in said district, shall be a legal voter at any school meeting, and no other person shall be allowed to vote.

SEC. 15. Any school meeting shall have power to adjourn from time to time as occasion may require.

SEC. 16. A school meeting legally called shall have power by the vote of a majority present, to levy a tax on all the taxable property in the district, as the meeting shall deem sufficient to purchase or lease a suitable site for a school house, and to build, hire or purchase a school house and keep it in repair, and to furnish the same with necessary fuel and appendages, and to levy an additional tax on the district for the purchase or increase of a district library, globes, maps and such apparatus as the interest and well being of the school shall require. The library shall consist of such books as the district meeting shall direct.

SEC. 17. In all cases when a tax is to be levied, it shall be stated in the notices given of the meeting for what purpose or purposes a tax is to be levied.

SEC. 18. When a district is organized, it shall be to all intents and purposes a body corporate, capable of suing and being sued, and fully competent to transact all business appertaining to schools or school houses in their own district; and it shall be the duty of the directors to prosecute or defend any demands for or against their district; and notice shall be served upon one of the directors of any suit brought against a district.

SEC. 19. All district taxes shall be assessed by the directors according to the valuation of property made for the assessment of county taxes, and shall be collected by the clerk of the district, with an addition of five per cent. on the same, which the clerk shall receive for his services. Any person aggrieved by an excessive assessment of the directors of any school district, may have the same reduced by his own affidavit or any competent testimony, to the satisfaction of the clerk.

Teachers.

SEC. 20. It shall be the duty of every teacher of a common school, to procure a certificate of qualification and good moral character, before entering on the duties of a teacher. It shall be his duty to keep a register of the names of the children attending school, their age, the time when they begin, the time they continue, and of their daily attendance, which register shall be filed with the clerk of the district at the close of every term.

CHAPTER IV.

Miscellaneous provisions.

SEC. 1. The minutes of the first school meeting shall be signed by the chairman and secretary, and delivered to the clerk of the district, who shall file the same in his office.

SEC. 2. In all school meetings, the director whose term of office shall first expire, shall act as chairman, and the clerk of the district shall act as secretary.

SEC. 3. Districts shall have power to repeal, alter or modify their proceedings from time to time as occasion may require.

SEC. 4. District meetings, legally called, shall have power to levy a tax upon the property of the district for any purpose whatever, connected with and for the benefit of schools, and the promotion of education in the district.

SEC. 5. Any new district failing to organize and report to the county superintendent the number of children over four and under twenty-one years of age in said district, at least twenty days before the first Friday in November, or any district having been organized for the term of one year or more, failing to report to the county superintendent, as is required in section eleven of the chapter entitled "School meetings," in this act, shall not be entitled to any portion of the county school fund for the year; *Provided* that if the clerk of any school district shall fail to make such report, any inhabitant of such district may make such report, verified on oath, and the county superintendent shall receive it, the same as if made by the clerk.

SEC. 6. The county superintendent shall apportion all the county school fund for that year among those districts only which have organized and reported according to law.

SEC. 7. No district shall be allowed to draw the county school fund from the treasury, apportioned to it, until it shall raise an amount by tax in said district, to be expended in paying teachers in said district, equal to the amount to which such district is entitled out of the county school fund; nor until it shall satisfy the county superintendent that a school has been kept in said district by a qualified teacher for at least three months during the year immediately following the appointment.

SEC. 8. When the clerk of any district shall satisfy the county superintendent that an amount has been raised by tax in his district for the support of teachers, equal to the amount apportioned to them from the county fund, and that a school has actually been kept by a qualified teacher as provided in the preceding section, the superintendent shall then issue an order on the county treasury in favor of the clerk of said district for the amount to which such district is entitled, out of the county school fund.

SEC. 9. Any district failing to comply with the provisions of the two preceding sections for the term of one year after any apportionment, shall forfeit its apportionment, and the amount thereof shall be again added to the county school fund, and divided again among all the districts.

SEC. 10. Whenever a school is kept in any district, the teacher of which shall be supported out of the general county school fund, or by tax on the district as aforesaid, such school shall be open and free to all children between the ages of four and twenty-one years in such district.

SEC. 11. The directors of any district may permit scholars living out of the district to attend school with or without charge, as they may deem proper.

SEC. 12. No person shall be disqualified to hold the office of county superintendent, district director or clerk, on account of holding any other office within the territory at the same time.

SEC. 13. It shall be the duty of the directors to appoint a suitable person for librarian, when the district shall have procured a library.

OF ELECTIONS.

CHAPTER I.

SEC. 1. All white male inhabitants over the age of twenty-one years, who *shall have resided within* this territory for six months next preceding an election, shall be entitled to vote at any election for delegate to congress, and for territorial, county and precinct officers; *Provided* that they shall be citizens of the United States, or shall have declared their intentions on oath to become such, and shall have resided six months in the territory, and fifteen days in the county where they offer to vote, next preceding the day of election.

SEC. 2. No person under guardianship, non compos mentis, or insane, nor any person convicted of treason, felony or bribery, unless restored to civil rights, shall be permitted to vote at any election. Nor shall any officer or soldier of the United States army be permitted to vote at any election during the term of their enlistment, unless they were residents of the territory at the time of their enlistment.

General elections.

SEC. 3. A general election shall be held in the several election precincts in this territory, on the first Monday of June in each year, at which there shall be chosen so many of the following officers as are by law to be elected in such year; that is to say: A delegate to congress, members of the territorial council and house of representatives, judges of probate, district attorneys, county superintendents, county commissioners, *sheriffs, county treasurers, coroners, justices* of the peace, county assessors, constables and all other county, precinct and district officers not herein enumerated or otherwise provided for.

SEC. 4. It shall be the duty of the county commissioners, at their regular session in April preceding the general election, to appoint three capable and discreet persons possessing the qualifications of electors to act as judges of the election at each election precinct, and said commissioners shall also set off and establish election precincts or districts when it may be necessary; and the clerk of the said board of commissioners shall make out and deliver to the sheriff of the county, immediately after the appointment of the said judges, a notice thereof in writing, directed to the judges so appointed; and it shall be the duty of the said sheriff within twenty days after the receipt of the said notices, to serve the same upon each of the said judges of the election. If in any precinct, any of such judges do not serve, the voters of said precinct may elect a judge or judges to fill the vacancy on the morning of the election.

SEC. 5. The said judges shall choose two persons having similar qualifications with themselves, to act as clerks of the election. The said judges shall be and continue judges of all elections of civil officers, to be held at their respective precincts, until other judges shall be appointed as hereinbefore directed; and the said clerks of election may continue to act as such during the pleasure of the judges of election; and the county commissioners shall from time to time fill all vacancies which may occur in the office of judges of election, at any election precinct within their respective counties.

SEC. 6. The clerks of the several boards of county commissioners shall, at least forty days before any general election, and at least twenty days previous to any special election, make out and deliver to the sheriff of his county, or to a justice of the peace of any county attached for judicial purposes, three written notices thereof for each election precinct, said notices to be as nearly as circumstances will admit, as follows:—

> Notice is hereby given, that on the first Monday, the —— day of June next, at the house of ——, an election will be held for territorial, county, town, or district officers, (naming the offices to be filled, as the case may be.) which election will be opened at nine o'clock in the morning, and will continue until six o'clock in the afternoon of the same day. Dated this —— day of —— A.D., (as the case may be.)
>
> (Signed,) A.B., clerk of the board of county commissioners.

SEC. 7. The sheriff aforesaid, to whom such notices shall be delivered, as aforesaid, shall put up in three of the most public places in each town, or precint, the notices referring to such town or precinct, at least twenty days previous to the time of holding any general election, and at least eight days previous to the time of holding any special election; and in cases where towns and precincts may not be set off by law as election precincts, said notices shall be posted as follows:—one at the house where the election is authorized to be held, and the others at two of the most public and suitable places in that vicinity or settlement.

SEC. 8. Previous to votes being taken, the judges and clerks of the elections shall severally take an oath in the following form; *to wit*, I, A.B., do solemnly swear (or affirm, as the case may be), that I will perform the duties of judge of the election, (or clerk, as the case may be), according to law and the best of my ability; that I will studiously endeavour to prevent fraud, deceit, and abuse, in conducting the same.

SEC. 9. In case there shall be no judge, or justice of the peace, present at the opening of the election, or in case such judge or justice shall be appointed judge or clerk of the election, it shall be lawful for the judges of the election, and they are hereby empowered to administer the oath to each other, and to the clerk of the election, and the person administering the oaths shall cause an entry thereof to be made and subscribed by him, and prefixed to the poll books.

SEC. 10. At all elections to be held under this chapter the polls shall be opened at the hour of nine o'clock in the forenoon, and continue open until six o'clock in the afternoon of the same day, at which time the polls shall be closed; *Provided*, that the judges of election, if they deem it necessary, for the purpose of receiving the votes of all the electors wishing to vote, may postpone the closing of the polls until seven o'clock, P.M.; and upon opening the polls, one of the clerks, under the direction of the judges, shall make proclamation of the same; and thirty minutes before the closing of the polls proclamation shall be made in like manner that the polls will be closed in half an hour; but the board may in their discretion adjourn the polls at twelve o'clock at noon for one hour, proclamation of the same being made.

SEC. 11. It shall be the duty of the clerks of the several boards of county commissioners to furnish one of the judges of every election precinct in the county with two poll books, at least five days before the time of holding any election.

SEC. 12. Every elector shall in full view, deliver to one of the judges of the election, a single ballot, or piece of paper, on which shall be written or printed the names of the persons voted for, with a pertinent designation of the office which he or they may be intended to fill; [illegible] ballot may be open or folded, as the voter may choose.

SEC. 13. The judge, to whom any ticket may be delivered, shall upon the receipt thereof, pronounce, with an audible voice, the name of the elector; and if no objection be made to him, and the judges be satisfied that the elector is legally entitled to vote, he shall immediately put the ticket in the box, without inspecting the names thereon, if it be a folded ballot; and the clerks of the election shall enter the name of the elector and number, in the poll book.

SEC. 14. It shall be lawful for any elector to vote for delegate to congress, at any place of holding an election within this territory; for members of the council and house of representatives, at any place of holding an election in the district in which he may reside; for county officers, at any place of holding an election in the county in which he resides; but for town or precinct officers, he shall not vote out of the town or precinct in which he resides; provided that an elector qualified to vote for a part, and not all, of the officers to be chosen at any election, shall vote an open ticket, that the judges may determine the legality of such vote.

SEC. 15. If any person offering to vote shall be challenged as unqualified by any judge or clerk of the election, or by any other person entitled to vote at the same poll, the judges shall declare to the person so challenged, the qualification of an elector; if such person shall then state himself duly qualified, and the challenge shall not be withdrawn, one of the judges shall then tender to him the following oath: "You do solemnly swear, (or affirm, as the case may be) that you are twenty-one years of age; that you are a citizen of the United States, (or that you have declared your intention to become a citizen, conformable to the laws of the United States and of this territory on the subject of naturalization;) and that you have resided six months in the territory, and fifteen days in the county next preceding the election;" and if any person so challenged shall refuse to take such oath so tendered, his vote shall be rejected; *Provided* that in case any person wishes to vote for delegate only, the fifteen days residence in the county need not be sworn to.

SEC. 16. If any person so offering such vote shall take such oath, his vote shall be received, unless it shall be proven by evidence satisfactory to a majority of the judges that he does not possess the qualification of an elector, in which case a majority of said judges are authorized to reject such vote; and if any person shall take such oath, knowing it to be false, he shall be deemed guilty of wilful and corrupt perjury; and shall, on conviction, suffer such punishment as now is or hereafter shall be prescribed by law for persons guilty of perjury. And if any person shall vote at any election who is not a qualified voter, he shall forfeit and pay for the use of the county in which such election shall take place, a sum not exceeding fifty, nor less than twenty-five dollars, to be sued for and recovered in the name of the county commissioners by a civil action, before any justice of the peace in such county.

Sec. 17. There shall be provided and kept by the judges of each election precinct, (at the expense of the county,) a suitable ballot-box, with a lock and key.

Sec. 18. There shall be an opening through the lid of such box of no larger size than shall be sufficient to admit a single folded ballot. Before opening the polls, the ballot-box shall be carefully examined by the judges of the election, that nothing may remain therein; it shall then be locked, and the key thereof delivered to one of the judges, to be designated by the board, and shall not be opened during the election, except in the manner and for the purposes hereinafter mentioned.

Sec. 19. At each adjournment of the polls, the clerks shall, in the presence of the judges, compare their respective poll lists, compute and set down the number of votes, and correct all mistakes that may be discovered, according to the decision of the board, until such poll lists shall be made in all respects to correspond.

Sec. 20. The ballot-box shall then be opened, and the poll lists placed therein; and such box shall then be locked, and a covering with a seal placed on the opening in the lid of such box, so as to entirely cov- the same, and the key delivered to one of the judges and the box to another, to be designated by the board.

Sec. 21. The judge having the key shall keep it in his own possession, and deliver it again to the board at the next opening of the poll; and the person having the care of the box, shall carefully keep it without opening it or suffering it to be opened, or the seal thereof to be broken or removed; *and shall publicly in that condition deliver it to the board* of judges at the next opening of the polls, when the seal shall be broken, the box opened, the poll lists taken out, and the box again locked.

Sec. 22. It shall be the duty of each judge of the election to challenge every person offering to vote, whom he shall know or suspect not to be qualified as an elector.

Sec. 23. For the preservation of order, the judges are hereby authorized to enforce a fine not exceeding fifty dollars, on any person or persons who shall conduct in a disorderly or riotous manner at the polls, and shall persist in such conduct after having been warned of the consequences, and on refusal to pay the same, to commit him or them to the common jail of the county for any time not exceeding six days, or until the fine shall be paid; and the constables, sheriffs, deputy sheriffs, and jailors, are hereby required to execute said order as though it had been issued by a magistrate in due form of law. If no constable, sheriff or deputy be present, the judges may appoint a special constable, or constables to execute their orders.

Canvass by the judges.

Sec. 24. As soon as the polls of the election shall be finally closed, the judges shall immediately proceed to canvass the vote given at such election, and the canvass shall be public, and continue without adjournment until completed.

Sec. 25. The canvass shall commence by a comparison of the poll lists from the commencement, and a correction of any mistake that may be found therein, until they shall be found or made to agree. The box shall then be opened, and the ballots contained therein taken out and counted by the judges, unopened, except so far as to ascertain whether each ballot is single; and if two or more ballots shall be found so folded together as to present the appearance of a single ballot, they shall be laid aside until the count of the ballot is completed; and if, on a comparison of the count with the poll lists, and the appearance of such ballots, a majority of the judges shall be of opinion that the ballots thus folded together were voted by one elector, they shall be destroyed.

Sec. 26. If the ballots in the box shall be found to exceed in number the whole number of votes on the poll lists, they shall be replaced in the box, after being purged as above, and one of the judges shall publicly draw out, and destroy therefrom so many ballots unopened, as shall be equal to such excess.

Sec. 27. The ballot and poll lists agreeing, or being made to agree, the board shall then proceed to count and ascertain the number of votes cast, and the clerks shall set down in their poll-books the name of every person voted for, written at full length, the office for which such person received such votes, and the number he did receive, the number being expressed at full length, such entry to be made as nearly as circumstances will admit, in the following form; to wit,

At an election held at the house of A.B., in the town, district, or precinct of —— in the county of —— and territory of Oregon, on the —— day of —— A.D., —— the following named persons received the number of votes annexed to their respective names, for the following described offices; to wit,

A.B. had —— votes for delegate to congress;

C.D. had —— votes for member of the legislative council;

E.F. had —— votes for member of the house of representatives; (and in like manner, for any other persons voted for).

Certified by us, G.H., J.K., L.M., judges of election.

Attest A.B., C.D., clerks of election.

Sec. 28. The judges of election shall then enclose and seal one of the poll-books under covers, directed to the clerk of the board of county commissioners of the county in which such election was held; and the packet thus sealed shall be conveyed by one of the judges or clerks of election, to be determined by lot if they cannot otherwise agree, or by some other person to be agreed upon by the judges, and delivered to the said clerk of the board of county commissioners, at his office, within ten days from the close of the polls; and the other poll-book together with the ballot-box, deposited with one of the judges of election, to be determined by lot, if not otherwise agreed upon; and the said poll-book shall be subject to the inspection of any elector, at any time thereafter, who may wish to examine the same. The returns of elections in unorganized counties shall be made to the clerk of the county to which they are attached for judicial purposes.

Sec. 29. If any judge or clerk of election, after being deputed by the judges of election to carry the poll book of such election to the clerk of the county, shall fail or neglect to deliver such poll-book to the said clerk within the time prescribed by law, safe with the seals unbroken, he shall for every such offence, forfeit and pay the sum of five hundred dollars for the use of the county, to be recovered by a civil action in the name of the county commissioners in the district court.

Of the canvass by the clerk of the board of county commissioners.

Sec. 30. On the tenth day after the close of any election, or sooner, if all the returns be received, the clerk of the board of county commissioners, taking to his assistance two justices of the peace of the county, shall proceed to open said returns and make abstracts of the votes; such abstract of votes for delegate to congress shall be on one sheet; the abstract of the votes for members of the legislative assembly shall be on one sheet; and the abstract of votes for county and precinct officers shall be on another sheet; and it shall be the duty of the said clerk of county commissioners, immediately to make out a certificate of election to each of the persons having the highest number of votes, for members of the legislative assembly, county and precinct officers respectively, and to deliver such certificate to the person entitled to it, on his making application to the clerk at his office; *Provided* that when a tie shall exist between two or more persons for the council or house of representatives, the clerk of the board of commissioners shall give notice to the sheriff of the county, who shall immediately advertise another election, giving at least ten days' notice. And it shall be the duty of the clerk of the board of commissioners of such county, on the receipt of the returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of election may be entitled for their services, and lay the same before the board of commissioners at their next session, and the said board shall order the compensation aforesaid to be paid out of the county treasury.

Sec. 31. If the requisite number of county or precinct officers shall not be elected by reason of two or more persons having an equal, and the highest number of votes for one and the same office, the clerk, whose duty it is to compare the polls, shall give notice to the several persons so having the highest, and an equal number of votes, to attend at the office of the proper clerk, at a time to be appointed by said clerk, who shall then and there proceed publicly to decide by lot which of the persons so having an equal number of votes, shall be declared duly elected; and the said clerk shall make and deliver to the person thus declared duly elected, a certificate of his election as hereinbefore provided.

Sec. 32. The clerk of the board of county commissioners, immediately after making the abstract of the votes given in his county, shall make a copy of each of said abstracts and transmit it by mail to the secretary of the territory at the seat of government, and it shall be the duty of the secretary of the territory, with the marshal of the territory or his deputy, in presence of the governor, to proceed within thirty days after the election, and sooner if the returns be all received, to canvass the votes given for delegate to congress; and the governor shall grant a certificate of election to the person having the highest number of votes, and shall also issue a proclamation declaring the election of such person. In case there shall be no choice by reason of any two or more persons having an equal and the highest number of votes, the governor shall, by proclamation, order a new election.

Sec. 33. If the returns of the election of any county in this territory shall not be received at the office of the secretary of the territory, within twenty days after the election, the said secretary shall forthwith send a messenger to the board of commissioners of such county, whose duty it shall be to furnish the said messenger with a copy of such returns; and the said messenger shall be paid out of the county treasury of the said county, the sum of twenty cents for each mile he shall necessarily travel in going to and returning from said county.

Sec. 34. Any person who shall receive a certificate of his election as a member of the council, or house of representatives, of the legislative assembly, coroner, or county commissioner, shall be at liberty to resign such office, though he may not have entered upon the execution of its duties, or taken the requisite oath of office, and when any vacancy shall happen in the office of member of the council, or house of representatives, by death, resignation, or otherwise, and a session of the legislature is to take place before the next annual election, the governor shall issue a writ of election, directed to the sheriff of the county or district in which such vacancy shall happen, commanding him to notify the several judges in his county or district, to hold a special election to fill such vacancy, or vacancies, at a time appointed by the governor. If a vacancy happen in the office of sheriff, the county commissioners shall appoint some one to fill such vacancy until the next election; and when a vacancy shall happen in the office of delegate to congress from this territory it shall be the duty of the governor to issue his proclamation appointing a day to hold a special election to fill such vacancy.

Sec. 35. When two or more counties are united in one council or representative district, the clerk of the board of county commissioners of the county last established, shall, on the tenth day after the election, unless a previous time is agreed upon, attend at the office of the clerk of the board of the senior county, and in conjunction with him, shall canvass the votes according to law, and the certificate of election shall be signed by both clerks, and be delivered to the proper persons, at the office of the clerk of the senior county.

Sec. 36. There shall be allowed, out of the county treasury of each county, to the several judges and clerks of election, three dollars per diem, and to the person carrying the poll-books from the place of election to the clerk's office, the sum of twenty cents per mile, for going and returning, to be paid out of the county treasury.

Sec. 37. If any judge, or clerk of election, or any other person, in any manner concerned in conducting the election, shall corruptly violate any of the provisions of this chapter, he shall forfeit and pay to the county, a sum not less than fifty nor more than five hundred dollars, to be recovered by a civil action, in the name of the county commissioners of the proper county.

Sec. 38. The term of office of all officers elected, shall begin to run from the time of their election, unless some other express provision is made by law.

Sec. 39. In all elections, unless it is otherwise expressly provided, the person having the highest number of votes for any office shall be deemed to have been elected.

SEC. 40. In counting votes the judges of election shall disregard mis-spelling, or abbreviations of the names of candidates for office, if it can be ascertained from such votes for whom they were intended.

Of the manner of contesting the election of county, town, district, and precinct officers.

SEC. 41. Any person wishing to contest the election of any person to any county, district, township, or precinct office, may give notice in writing to the person whose election he intends to contest, that his election will be contested, stating the cause of such contest briefly, within thirty days from the time said person shall claim to have been elected.

SEC. 42. Said notice shall be served in the same manner as a summons, issued out of the district court, ten days before any hearing upon such contest as herein provided shall take place, and shall state the time and place that such hearing shall be had; upon the return of said notice served to the clerk of the district court of such county, he shall thereupon enter the same upon his issue docket as an appeal case, and the same shall be heard in its order by the court; *Provided* that if the case cannot be determined by the district court, in term time, within one month after the termination of such election, the judge of the district court may hear and determine the same at chambers, as soon thereafter as may be practicable, and shall make all necessary orders for the trial of the case, and carrying his judgment into effect; *Provided* that this section shall not apply to township or precinct officers.

SEC. 43. In case of contest between any persons claiming to be elected to any township or precinct office, said notice shall be served in manner aforesaid, and shall be returned to the judge of probate of the county.

SEC. 44. Upon the return of said notice to the said judge of probate, and on the day and at the place therein named, the said judge of probate shall hear and determine such contest, and make all necessary orders for the trial of the cause, and carrying his judgment into effect.

SEC. 45. Each party shall be entitled to subpenas, and subpenas duces tecum, as in ordinary cases at law, and the court shall hear and determine (without the intervention of jury) the same in such manner as shall carry into effect the expressed will of a majority of the legal voters as indicated by their votes for such office, not regarding technicalities or errors in spelling the name of any candidate for such offie., And the clerk of said court or judge of probate shall issue a certificate to the person declared to be duly elected by said court, which shall be conclusive evidence of the right of said person to hold said office; *Provided* that the judgment or decision of the district court in term time, or a decision of a judge thereof in vacation, as the case may be, may be removed to the supreme court by writ of error, or in such other manner as is provided for removing causes from the district to the supreme court; and *provided further*, that appeals may be taken from the decision of a judge of probate to the district court as in probate cases; in all which cases the party removing any such judgment or decision by writ of error or appeal, shall file in the proper court a bond to the opposite party in such sum and with such sureties as shall be prescribed by a judge thereof; conditioned for the payment of all costs that may be properly taxed against him.

SEC. 46. This chapter shall not be construed so as to impair in any way the right of any person to contest any election in the manner otherwise provided by statute.

CHAPTER II.

Of resignations, vacancies, and removals, and supplying vacancies.

SEC. 1. Resignations shall be made as follows:

1. By the treasurer of the territory, auditor of the territory, and by all officers elected by the legislature, to the governor;

2. By all officers who hold their offices by election, to the officer or officers respectively authorised by law to order a special election to fill such offices respectively;

3. By all other officers holding their offices by appointment, to the body, board, or officer that appointed them.

Vacancies.

SEC. 2. Every office shall become vacant on the happening of either of the following events, before the expiration of the term of such office:

1. The death of the incumbent;

2. His resignation;

3. His removal;

4. His ceasing to be an inhabitant of the district, county, town, or village, for which he shall have been elected or appointed, or within which the duties of his office are required to be discharged;

5. His conviction of any infamous crime, or of any offence involving a violation of his official oath;

6. His refusal or neglect to take his oath of office, or to give or renew his official bond, or to deposit such oath or bond within the time prescribed by law;

7. The decision of a competent tribunal declaring void his election or appointment.

SEC. 3. The governor shall also declare vacant the office of every officer required by law to execute an official bond, whenever a judgment shall be obtained against such officer for a breach of the condition of such bond.

Supplying vacancies.

SEC. 6. Whenever a vacancy shall occur during the recess of the legislature in any office which the legislature are authorized to fill by election, the governor, unless it is otherwise specially provided, may appoint some suitable person to perform the duties of such office.

SEC. 7. When at any time there shall be in either of the offices of judge of probate, county clerk, sheriff, coroner, or any county or precinct office, no officer duly authorised to execute the duties thereof, some suitable person may be appointed by the county commissioners to perform the duties of either of said offices.

SEC. 8. Every such person so appointed, in pursuance of either of the two last preceding sections, shall before proceeding to execute the duties assigned them, qualify in the same manner as required by law of the offices in whose place he shall be appointed; and he shall continue to exercise and perform the powers and duties of the office to which he shall be so appointed, until such vacancy shall be regularly supplied as provided by law.

SUPPORT OF THE POOR.

Sec. 1. The several boards of county commissioners of the several counties of this territory shall be, and they are hereby vested with entire and exclusive superintendence of the poor in their respective counties.

Sec. 2. Every poor person who shall be unable to earn a livelihood in consequence of bodily infirmity, idiocy, lunacy, or other cause, shall be supported by the father, grandfather, mother, grandmother, children, grandchildren, brothers or sisters of such poor person, if they or either of them be of sufficient ability, and every person who shall fail or refuse to support his or her father, grandfather, mother, grandmother, child, grandchild, sister or brother, when directed by the board of commissioners of the county where such poor person shall be found, whether such relative reside in the county or not, shall forfeit and pay to the county, for the use of the poor of their county, the sum of thirty dollars per month, to be recovered in the name of the county commissioners for the use of the poor as aforesaid, before any justice of the peace, or any court having jurisdiction; *Provided* that when any person becomes a pauper from intemperance or other bad conduct, he shall not be entitled to any support from any relation except parent and child.

Sec. 3. The children shall be first called on to support their parents if there be children of sufficient ability; if there be none, the parents of such poor persons shall be next called on, and if there be no parents or children of sufficient ability, the brothers and sisters shall be next called on; and if there be no brothers and sisters, the grandchildren of such poor person shall be called on, and then the grand-parents; but married females whilst their husbands live shall not be liable to a suit.

Sec. 4. When any poor person shall not have any such relatives in any county in this territory as are named in the preceding sections, or such relatives shall not be of sufficient ability, or shall fail or refuse to maintain such pauper, then the said pauper shall receive such relief as the case may require out of the county treasury, and the county commissioners may either make a contract for the necessary maintenance of the poor, or appoint such agents as they may deem necessary to oversee and provide for the same.

Sec. 5. When any minor shall become, or be likely to become chargeable to the county, either because of being an orphan, or because the parents, or other relations, as aforesaid, are unable or refuse to support such minor, it shall be the duty of the county commissioners to bind such minor as an apprentice to some respectable householder of the county, by written indenture, which shall bind such minor to serve as an apprentice, and shall in all respects be to the tenor and effect as required in the chapter concerning apprentices.

Sec. 6. When any non-resident, or any other person not coming within the definition of a pauper, shall fall sick in any county of this territory, not having money or property to pay his board, nursing, and medical aid, it shall be the duty of the commissioners of the proper county, on complaint being made, to give or order to be given such assistance to such poor person as they may deem just and necessary; and if said sick person shall die, then the said commissioners shall give, or order to be given to such person, a decent burial, and the said commissioners shall make such allowance for board, nursing, medical aid, or burial expences, as they shall deem just and equitable, and order the same to be paid out of the county treasury.

SEC. 7. When application is made by any pauper to the board of county commissioners of any county in this territory, for relief, it shall be necessary for said commissioners to require of said pauper satisfactory evidence that he has been a resident of said county for twelve months, immediately preceding the day upon which such application was made.

SEC. 8. When on application made by any pauper to the board of commissioners as aforesaid, it shall appear to the satisfaction of said board that the person so applying for relief has resided in said county agreeably to the provisions of the foregoing section of this chapter, he shall be entitled to all the relief provided by this chapter; but if on the contrary, it shall appear to the satisfaction of said board, that said pauper has not been a resident of said county, agreeably to the provisions of the seventh section of this chapter, they shall proceed to remove from their county, at the expense of said county, such pauper to the county, where such pauper may have his residence, or may, if they think best, issue a notice directed to some constable of the county, which notice said constable shall serve forthwith on said pauper, requiring him to depart forthwith from the county, and after so serving said notice, by reading the same to said pauper, said constable shall within five days thereafter, return the same to the said clerk of the board of county commissioners, issuing the same, noting the time and manner of service.

SEC. 9. After service of such notice as aforesaid, no pauper shall be entitled to relief from such county, unless the county commissioners shall deem it absolutely necessary.

SEC. 10. The board of county commissioners, of any county in this territory, may, if they think proper, cause to be built or provided in their respective counties, work-houses for the accommodation and employment of such paupers, as may from time to time become a county charge; and said workhouse and paupers shall be under such rules and regulations as said board of commissioners may deem proper and just.

SEC. 11. If any person shall bring and leave any pauper in any county in this territory, wherein such pauper is not lawfully settled, knowing him to be a pauper, he shall forfeit and pay the sum of one hundred dollars for every such offence, to be sued for and recovered by and to the use of such county, in a civil action, before any court, having jurisdiction of the same.

BASTARDS.

Sec. 1. On complaint being made to any justice of the peace, by any female who shall be delivered of a bastard child, or who shall be pregnant with a child, which if born alive might be a bastard, accusing any person of being the father of such child, the justice shall take such complaint in writing, under the oath of such female, and shall thereupon issue his warrant against the person accused, directed to the sheriff, or any constable of his county, commanding him forthwith to bring such accused person before the justice to answer such complaint.

Sec. 2. On the return of such warrant, if the accused be in custody, or shall appear, the justice shall proceed to eaxmine the complainant, under oath, respecting the cause of complaint; and such accused person shall be allowed to ask the complainant, when under oath, any questions necessary for his justification, or defence; and such questions and the answers, with every part of the proceedings, shall be reduced to writing by said justice.

Sec. 3. If such accused person shall pay, or secure to be paid to the female complaining, such sum or sums of money, or other property, as she may agree to receive in full satisfaction, and as shall be approved by the commissioners of the county, of which agreement the justice shall make a memorandum upon his docket; and if the accused shall also enter into bonds, with sufficient sureties to be approved by the justice, to the commissioners of the county in which such female shall reside, and their successers in office, conditioned to secure and indemnify such county from all charges for the maintenance of such child, until such child shall have attained the age of ten years; and shall also pay all expenses, if any, incurred by such county, for the lying in, support, and attendance upon the mother of such child, during her sickness, and the costs of prosecution; then the justice shall discharge such accused person.

Sec. 4. In case any person accused as aforesaid, does not comply with the provisions of the preceding section, the justice, before whom the complaint shall be made, shall bind such person in a recognizance, with one or more sufficient sureties, to be approved by the justice, in a sum not less than one hundred nor more than five hundred dollars, to appear at the next term of the district court for the proper county, to answer the said complaint, and to abide the order of said court thereon; and on his neglect or refusal to find such security, the justice shall cause him to be committed to the jail of the county, there to be held to answer to such complaint at the next term of said court; and such justice shall thereupon certify the examination and all process, and papers in the case, to the clerk of said court.

Sec. 5. If at the next term of said court the complainant shall not have been delivered, or shall not be able to attend, or if at any time there shall be any other sufficient reason therefor, the court may order a continuance of the cause, from term to term, as shall be judged necessary; and upon such continuance shall order the renewal of the recognizance, and when renewed, the same shall remain in full force until final judgment; *Provided*, that if the sureties in the recognizance shall at any term of said court object to being any longer held liable, or if the court shall, for any cause, deem it proper, such court may order a new recognizance to be taken, and the defendant shall stand committed until he give such new recognizance.

SEC. 6. Upon the trial of the cause, the mother of the bastard shall be admitted as a witness, and the issue shall be whether the accused is guilty or not guilty; and if he shall be found guilty, or if he shall admit the truth of the accusation, he shall be adjudged to be the father of such child, and shall stand chargeable with the maintenance thereof in such sum or sums, or in such manner as the court may direct, and the payment of all the costs of prosecution; and the examination taken before the justice, shall in all cases be read to the jury, when the reading of the same shall be demanded by the accused.

SEC. 7. The person so adjudged to be the father of such child, shall give bonds to the commissioners of the proper county, with sufficient sureties, to the satisfaction of the court, for the performance of such order, and also for the payment of all expenses incurred by such county for lying in, and attendance upon the mother of such child, during her sickness and also for the care and support of such child, prior to the giving of such bond; and in case he shall neglect or refuse to give such bond, and pay the costs of prosecution, he shall be committed to the jail of the county, there to remain until he shall comply with the order of the court, or until he shall be discharged therefrom as provided by law.

SEC. 8. And man who shall have been imprisoned ninety days for having failed to comply with the orders of the district court, as provided in this chapter, shall have the benefit of the law for the relief of prisoners committed on execution, issued on a judgment recovered in a civil action; *Provided* he shall procure the like notification of his intention to take the oath prescribed by the said law, to be served upon the complainant, if still living within the territory, and also upon the chairman of the said board of commissioners; such notification to be served at least fifteen days before the time appointed for taking the oath.

SEC. 9. The mother of such child, and the said board of commissioners respectively, may at any time after the liberation of such prisoner on taking said oath, recover by action any sum of money which ought to have been paid to them respectively by him, in pursuance of such order of the court.

SEC. 10. When the mother of the bastard child commences any such proceedings, and fails to prosecute the same, the commissioners of the proper county, or any person interested in the support of such bastards, may prosecute the proceedings commenced by the mother to final judgment.

SEC. 11. If any female shall be delivered of a bastard child, which shall be a public charge, or likely to become such, or shall be pregnant of a child likely to be born a bastard, and to become a public charge, the board of commissioners of the county, where such female shall reside, or any of them, may, upon application for aid, in supporting such child by the mother thereof, or if they deem proper without such application, apply to some justice of the peace of the same county, to make inquiry into the facts and circumstances of the case.

SEC. 12. Such justice shall examine such female on oath respecting the father of such child, the time when, and the place where she was begotten with child, and such other circumstances, as the justice may deem necessary for the discovery of the truth; and shall thereupon issue his warrant to apprehend the reputed father; and the same proceedings shall be thereupon had, as if complaint had been made by such female, as prescribed in the foregoing provisions of this chapter, and with the like effect; any warrant issued under the provisions of this chapter, may be executed in any part of this territory, and in all cases, said commissioner and the accused may require the attendance of such female, to testify the same as witnesses in other cases.

SEC. 13. The commissioners of any county in this territory shall have power to make such compromise and arrangement with the putative father of any bastard child in such county, relative to the support of such child, as they shall deem equitable and just; and thereupon may discharge such putative father, from all liability for the support of such bastard.

MARRIAGE.

CHAPTER I.

SEC. 1. Marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of the parties capable in law of contracting, is essential.

SEC. 2. Every male person who shall have attained the full age of eighteen years, and every female who shall have attained the full age of fifteen years, shall be capable in law of contracting marriage, if otherwise competent; *Provided however*, that nothing in this act shall be construed so as to make the issue of any marriage illegitimate, if the person shall not be of lawful age.

SEC. 3. No marriage shall be contracted while either of the parties shall have a husband or wife living; nor between parties who are nearer of kin than first cousins, computing by the rules of the civil law, whether the half or the whole blood.

SEC. 4. Marriages may be solemnized by any justice of the peace in the county in which he is elected, and they may be solemnized throughout the territory by any judge of a court of record, and by an ordained minister of the gospel.

SEC. 5. If any person intending to marry shall be under the age of twenty-one, if a male, or under the age of eighteen years, if a female, and shall not have had a former wife or husband, the consent in person or in writing of the parent or guardian having the custody of such minor, if he or she have either a parent or guardian living in this territory, shall be given to the person solemnizing the marriage, before such marriage shall take place.

SEC. 6. In the solemnization of marriage, no particular form shall be required, except that the parties shall declare, in the presence of the judge, minister or magistrate, and the attending witnesses, that they take each other as husband and wife; and in every case there shall be at least two witnesses present, besides the person performing the ceremony.

SEC. 7. Whenever a marriage shall have been solemnized, the person solemnizing the same shall give to each of the parties, if required, a certificate thereof, specifying therein the names and residences of the parties, and of at least two witnesses present, and the time and place of such marriage, and where the consent of the parent or guardian is necessary, stating that the same was duly given.

SEC. 8. Every person solemnizing a marriage shall make a record thereof, and within one month after such marriage, shall make and deliver to the clerk of the district court of the county where the marriage took place, a certificate under his hand, containing the particulars mentioned in the preceding section.

SEC. 9. All such certificates shall be filed and recorded by the said clerk, in a book to be kept by him for that purpose; and for recording the same such clerk shall receive a fee of one dollar from the person solemnizing the marriage, who shall be entitled to receive the same from the parties before the marriage.

SEC. 10. Every person solemnizing a marriage, who shall neglect to make and deliver to the clerk a certificate thereof within the time above specified, shall forfeit for such neglect, a sum not less than ten, nor more than twenty dollars; and every clerk who shall neglect to record such certificate so delivered, shall forfeit the like penalty.

SEC. 11. If any person authorized by law to join persons in marriage, shall knowingly solemnize any marriage contrary to the provisions of this chapter, or shall wilfully make any false certificate of any marriage, or pretended marriage, he shall forfeit for every such offence a sum not exceeding five hundred dollars, or may be imprisoned in the county jail not exceeding one year.

SEC. 12. If any person shall undertake to join others in marriage, knowing that he is not lawfully authorized so to do, or knowing to any legal impediment to the proposed marriage; he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment in the county jail not more than one year, or by fine not less than fifty, nor more than five hundred dollars, or by both such fine and imprisonment in the discretion of the court.

SEC. 13. No marriage solelemnized before any person professing to be a judge, justice or minister, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected on account of any want of jurisdiction or authority in such supposed judge, justice or minister, provided the marriage be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

SEC. 14. The original certificates and records of marriage made by the judge, justice or minister, as prescribed in this chapter, and the record thereof by the clerk of the district court, or a copy of such record duly certified by such clerk, shall be received in all courts and places, as presumptive evidence of the fact of such marriage.

SEC. 15. Illegitimate children become legitimeizd by the subsequent marriage of their parents with each other.

SEC. 16. Marriages contracted with the consent of the parties, when the residence of the parties is remote from any person duly authorized to solemnize marriage, in any other manner than is herein prescribed, shall be valid; *Provided* that no legal impediment shall exist thereto; such contracts shall be made in writing, duly attested, and shall be recorded in the office of the clerk of the district court in the proper county, within sixty days after the execution of the same.

SEC. 17. All fines and forfeitures arising in consequence of a breach of this chapter, shall be paid into the county treasury, for the use of the county, and in all cases when a violation of the provisions of this chapter is not declared a misdemeanor, said fines and forfeitures shall be recovered by a civil action, to be brought by any person aggrieved, or by the county treasurer.

SEC. 18. All marriages solemnized among the people called "friends" or "quakers," in the form heretofore practised, and in use in their meetings, shall be good and valid.

CHAPTER II.

Divorce and alimony.

Sec. 1. All marriages which are prohibited by law, on account of consanguinity between the parties, or on account of either of them having a former husband, or wife, then living, shall, if solemnized within this territory, be absolutely void, without any decree of divorce, or other legal proceedings.

Sec. 2. When either of the parties to a marriage, for want of age or understanding, shall be incapable of assenting thereto, or, when the consent of either party shall have been obtained by force or fraud, and there shall have been no subsequent voluntary cohabitation of the parties, the marriage shall be void, from the time its nullity shall be declared, by a court of competent authority.

Sec. 3. In no case shall a marriage be adjudged a nullity, on the ground that one of the parties was under the age of legal consent, if it shall appear that the parties, after they had attained such age, had, for any time, freely cohabited together as husband and wife; nor shall the marriage of any insane person be adjudged void, after his restoration to reason, if it shall appear that the parties freely cohabited together, as husband and wife, after such insane person was restored to a sound mind.

Sec. 4. When a marriage is supposed to be void, or the validity thereof is disputed, for any of the causes mentioned in the two preceding sections, either party may file a complaint in the district court of the county where the parties, or one of them, resided, for annulling the same; and such complaint shall be filed, and proceedings shall be had thereon, as in the case of proceedings in said court for a divorce, and upon due proof of the nullity of the marriage, it shall be adjudged null and void.

Sec. 5. Divorce from the bonds of matrimony may be obtained by complaint under oath to the district court of the county in which the cause therefor shall have occurred, or in which the defendant shall reside or be found, or in which the plaintiff shall reside, if the latter be either the county in which the parties last cohabited, or in which the plaintiff shall have resided for six months before suit be brought for the following causes;

1. Impotency at the time of the marriage, continuing to the time of the divorce.
2. Adultery since the marriage remaining unforgiven;
3. Wilful desertion of either party by the other, for the space of one year;
4. Conviction of felony, or infamous crime;
5. Habitual gross drunkenness, contracted since marriage;
6. Harsh and cruel treatment, or personal indignities, rendering life burdensome.

Sec. 5. If the defendant is not a resident of the territory, or cannot for any cause be personally summoned, the court or judge, in vacation, may order notice of the pendency of the suit to be given in such manner and during such time, as shall appear most likely to convey a knowledge thereof to the defendant, without undue expense or delay; and if no such order be made, it shall be sufficient to publish such notice in a weekly newspaper, printed in or nearest to the county in which the suit is pending, four weeks in succession; and if the defendant fail to appear and make defence, at the first term after such notice, or after ten days personal service of summons, the evidence may be heard, and the cause decided at that term; or compulsory process may be had to obtain an appearance, or answer, if it be necessary, to the disposition of property, or of children.

SEC. 6. The court, in granting a divorce, shall make such disposition of, and provisions for, the children, as shall appear most expedient, under all the circumstances, and most for the present comfort and future well-being of such children; and when at the commencement, or during the pendency of the suit, it shall be made to appear to the court, or to any of the judges in vacation, that any child of the wife, whether she be plaintiff or defendant, which is too young to dispense with the case of its mother, or other female, has been, or is likely to be taken, or detained from her, or that any child of either party has been, or is likely to be taken, or removed by, or at the instance of the other party, out of the county, or concealed within the same, it shall be the duty of the court, or of such judge in vacation, forthwith to order such child to be produced before him, and then to make such disposition of the same, during the pendency of the suit, as shall appear most advantageous to such child, and most likely to secure to it the benefit of the final order to be made in its behalf; and all such orders may be enforced, and made effectual by attachment, commitment, and requiring security for obedience thereto, or by other means, according to the usages of courts, and to the circumstances of the case.

SEC. 7. In granting a divorce, the court shall also make such disposition of the property of the parties, as shall appear just and equitable, having regard to the respective merits of the parties, and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it, for the benefit of children. And all property and pecuniary rights and interests, and all rights touching the children, their custody, and guardianship, not otherwise disposed of, or regulated by the order of the court, shall by such divorce be divested out of the guilty party, and vested in the party at whose instance the divorce was granted. And if after the filing of the petition, it shall be made to appear probable to the court, or any of the judges in vacation, that either party is about to do any act that would defeat or render less effectual any order which the court might ultimately make concerning property or pecuniary interests, an order shall be made for the prevention thereof, to be enforced as such preliminary orders are enforced respecting children.

SEC. 8. The testimony of witnesses, in suits for divorce, shall be given orally in court, with the right to either party, to take and use depositions, on the same terms and in the same manner as in actions at law; and the pleadings, proceedings and practice shall conform to those at law, as nearly as conveniently may be; but all preliminary and final orders may be in such form as will best effect the object of this act, and produce substantial justice.

SEC. 9. When the marriage shall be dissolved by the husband being sentenced to imprisonment, and when a divorce shall be ordered for the cause of adultery, committed by the husband, the wife shall be entitled to her dower in his lands in the same manner as if he were dead; but she shall not be entitled to dower in any other case of divorce.

SEC. 10. Whenever an order of divorce from the bonds of matrimony is granted in this territory, by a court of competent authority, such order shall fully and completely dissolve the marriage contract as to both parties. And in all suits for a divorce, brought by a female, if a divorce be granted, the court may for just and reasonable cause, change the name of such female, who shall thereafter be known and called by such name as the court shall in its order or decree appoint.

LICENSES.

Sec. 1. No person shall be permitted to sell spirituous liquors in this territory without having obtained a license from the board of county commissioners of the proper county for that purpose.

Sec. 2. Every person applying for a grocery license to sell spirituous liquors in a less quantity than a quart, shall pay into the county treasury, the sum of one hundred dollars per annum, and in the same proportion for a less period; *Provided* that no license shall be granted for a less period than six months.

Sec. 3. On the applicant producing to the county commissioners the receipt of the county treasurer for the payment of the sum fixed in the preceding section, they shall give him a license for the term his receipt may call for.

Sec. 4. Every person applying for a license to sell spirituous liquors in a less quantity than one quart, before receiving the same, shall execute to the board of county commissioners of the proper county, a bond in the penal sum of five hundred dollars, with two or more sufficient sureties, conditioned that he will keep an orderly house, and that he will not permit any unlawful gaming or riotous conduct in or about his house; and in case of a violation of the foregoing conditions by any person giving such bond, he shall be liable to pay a fine of not less than ten, nor more than fifty dollars for any such violation; the same to be for the use of the common schools of the county in which the offence was committed, to be recovered in a civil action, as hereinafter prescribed; and the bond so given as aforesaid by such person, shall also be liable to be prosecuted as hereinafter prescribed, for any violation of its conditions.

Sec. 5. Every merchant, store-keeper, or other person desirous of selling or disposing of spirituous liquors in quantities not less than one quart, shall first pay into the treasury of the proper county the sum of one hundred dollars per annum, and in that proportion for a less period; *Provided* that no license shall be granted for a less period than six months. Upon the applicant producing to the county commissioners the receipt of the county treasurer for said sum, they shall license the said applicant for the term his receipt may call for.

Sec. 6. No person shall keep open any house or room in which intoxicating liquor is kept for retail, on the first day of the week commonly called Sunday, or give, or sell, or otherwise dispose of intoxicating liquor on that day; any person violating this section shall be fined in any sum not exceeding twenty-five, nor less than ten dollars for each offence; and such fine to be for the use of common schools in the county in which the offence was committed; *Provided* that this section, so far it prohibits keeping open a house or room, shall not apply to tavern-keepers.

Sec. 7. If any person or persons shall barter, sell or dispose of in any manner, any spirituous liquors without having first obtained a license agreeably to the provisions of this chapter, he shall upon conviction thereof, by indictment, in any court having jurisdiction of the same, be fined in any sum not exceeding two hundred, nor less than fifty dollars, for the use of common schools in the county where the offence shall have been committed; and upon failure to pay the fine so assessed, shall be confined in the county jail one day for every two dollars thereof until said fine be discharged.

SEC. 8. And it is hereby made the duty of the prosecuting attorney, sheriffs, constables and justices of the peace, knowing of any violation of the provisions of this chapter, to make complaint thereof to the grand jury at the next session of the district court of the county in which the offence may have been committed after said violation; and the moneys collected on such judgment except taxable costs, shall be paid to the treasurer of the proper county, for the use of the common schools therein. It shall also be the duty of the clerk of the board of county commissioners to prosecute the bond given by such applicant, as is required by the fourth section of this chapter, for any violation of its conditions.

SEC. 9. Every clerk of the board of county commissioners shall, on the first day of the term of each district court, deliver to the grand jury an accurate list of all persons holding licenses under the provisions of this chapter, within the county, which list shall show the date and expiration of each license.

SEC. 10. It shall be the duty of the grand jury at each and every term of the district court in any county in this territory, to make a strict inquiry, and return bills of indictment against every person violating any of the provisions of this chapter.

Billiard tables and ball alleys.

SEC. 11. No person shall be permitted to keep a billiard table or ball alley to let for hire, without obtaining a license from the board of county commissioners of the proper county for that purpose.

SEC. 12. Any person wishing to keep a ball alley, (commonly called a nine-pin alley) or ball alleys, providing that they are all kept in the same room, shall pay into the county treasury the sum of fifty dollars per annum, and at the same rate for a shorter period; *Provided* that no license shall be granted for a shorter period than six months. Upon the production of the receipt of the county treasurer by the applicant for the required sum, the county commissioners shall grant said applicant a license for the term to which his receipt may entitle him.

SEC. 13. Any person wishing to keep a billiard saloon or billiard table or billiard tables, providing all said tables are kept in the same room, shall pay into the county treasury the sum of fifty dollars per annum, and at the same rate for a shorter period, provided that no license shall be granted for a shorter period than six months; and upon the applicant producing to the county commissioners the receipt for the required sum, they shall grant said applicant a license for the term to which his receipt may entitle him.

SEC. 14. If any person shall violate the provisions of any of the three preceding sections, he shall be liable to indictment in the same manner as for a violation of the license law relating to spirituous liquors, and shall be subject to the same punishment; and all fines when collected, shall be appropriated in the same way; and it is hereby made the duty of the prosecuting attorney, sheriffs and justices of the peace, to make complaint to the grand jury of the violation of said provisions.

Peddlers.

SEC. 15. No peddler shall be permitted hereafter to vend, sell or retail at private sale, any goods, wares, and merchandise, without first having obtained a license for that purpose from the county commissioners of the county in which said peddler may intend to offer said goods for sale, and paying such sum as said commissioners shall assess, not less than ten nor more than one hundred dollars per annum, or at the same rate for a shorter period; and if any person or persons shall peddle any goods, wares or merchandise within any county in this territory without first having obtained a license for that purpose; and any such person or persons so offending shall forfeit and pay any sum not exceeding two hundred, nor less than fifty dollars, to be recovered by action at law, in the name of the county commissioners of the proper county, for the use of said county, before any justice of the peace, or any court of record, having jurisdiction thereof.

SEC. 16. No person or persons applying for a license or permit, shall be entitled to the same, until he or they shall file with the clerk of the board of county commissioners a receipt from the county treasurer, for the amount ordered to be paid by such applicant or applicants, agreeably to the provisions of this chapter.

Shows and exhibitions.

SEC 17. It shall be the duty of the board of county commissioners to tax the price for which a license may be granted for theatrical exhibitions, public shows, and such other exhibitions as they may deem proper, to which admission is obtained on payment of money, upon such terms and conditions as they shall think reasonable.

SEC. 18. Any company, person or persons traveling for the purpose of theatrical exhibitions, public shows of any kind, circus, public singing, or serenaders of any description who may wish to exhibit in any part of the territory, may so exhibit by paying to the county treasurer for a license, such sum as the treasurer may think proper; *Provided* that the county commissioners are not in session, and have not previously fixed the price of such licenses. In case such price has been fixed, then the applicant shall pay to the county treasurer the price so fixed, and the said treasurer shall give him a receipt, stating for what purpose the money was paid.

SEC. 19. Any person who shall set up or exhibit any such exhibition or show, without license first obtained, as provided in the preceding section, or contrary to the terms and conditions of such license, or while such license is suspended, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding two hundred dollars.

SEC. 20. Nothing in the three preceding sections shall be construed as preventing the board of trustees of any incorporated village, or the proper authorities of any incorporated city, from licensing such theatrical exhibitions, public shows or other exhibition, in pursuance of the authority granted by the charter of such village or city respectively, or the acts under which they may be incorporated, and agreeable to the ordinances and by-laws made in pursuance of the provisions of such act of incorporation.

SEC. 21. If application be made for a license under any of the provisions of this chapter, while the county commissioners are not in session, the clerk of the board may issue license upon the presentation of the receipt of the county treasurer as before directed.

MARKS AND BRANDS, WEIGHTS AND MEASURES, AND SEALS.

Marks and brands.

SEC. 1. It shall be the duty of the register of deeds, of each county, on the application of any person residing in such county, to record a description of the marks and brands with which said person may be desirous of marking his horses, cattle, sheep or hogs; but the same description shall not be recorded for more than one resident of the same county.

SEC. 2. If any person shall wilfully mark any of his horses, cattle, sheep or hogs, with the same mark or brand previously recorded by any resident of the same county, and while the same mark shall be used by such resident, the person so offending shall forfeit for every such offence five dollars, to be recovered before any justice of the peace of such county.

Weights and measures.

SEC. 1. The weights and measures, together with the scales and beams, and those made in conformity therewith, which are now, or may hereafter be deposited in the treasury of this territory, shall be preserved by the treasurer, and be the public standards in this territory.

SEC. 2. The treasurer of the territory shall be the sealer of weights and measures, and he shall have and keep a seal which shall be so formed as to impress the letters O. T. upon the weights and measures, scales and beams to be sealed by him; with which he shall seal all such authorized public standards of weights and measures; and all the weights and measures, scales and beams, to be provided by the several counties, when examined by said treasurer and found to be in conformity with the standard weights and measures, scales and beams aforesaid.

SEC. 3. When any commodity shall be sold by the hundred weight, it shall be understood to mean the nett weight of one hundred pounds avoirdupois, and all contracts concerning goods or commodities sold by weight, shall be construed accordingly, unless such construction would be manifestly inconsistent with the special agreement of the parties contracting.

SEC. 4. Whenever wheat, rye, indian corn, oats, barley, clover seed, buckwheat, dried apples, or dried peaches, shall be sold by the bushel, and no special agreement as to the measure or weight thereof, shall be made by the parties, the measure thereof shall be ascertained by weight, and shall be computed as follows:

Sixty pounds for a bushel of wheat, or cloverseed;
Fifty-six pounds for a bushel of rye, or Indian corn;
Thirty-two punds for a bushel of oats;
Forty-six pounds for a bushel of barley;
Forty-two pounds for a bushel of buckwheat; and
Twenty-eight pounds for a bushel of dried apples or dried peaches.

SEC. 5. The half bushel and the parts thereof shall be the standard measure for charcoal, fruits and other commodities, customarily sold by heaped measure, and in measuring such commodities, the half bushel, or other smaller measure, shall be heaped as high as may be, without special effort or design.

STRAYS.

CHAPTER I.

Sec. 1. Any person taking up any boat, skiff, or other water craft, or any stray animal, shall within seven days thereafter, notify the owner thereof, if to him known, and request such owner to pay all reasonable charges, and take such stray away.

Sec. 2. No person shall take up any stray animal, except horses and mules, unless such person shall be at the time a resident of the same county wherein such stray shall be found, nor unless such stray be found upon the lands owned or occupied by the finder.

Sec. 3. If the owner of any stray be unknown, the finder shall, within ten days after taking up the same, file a notice thereof with the clerk of the board of county commissioners; and if the stray or strays so taken up are of the value of less than five dollars, he shall also post up notices of the taking up of such stray in two or more public places in such county; but if the stray or strays so taken up, are of the value of more than five dollars, he shall cause such notice to be published in some newspaper of the county for four successive weeks, if one be printed therein; if there be none, then by posting up written notices in three of the most public places in the county; all said notices shall contain a brief description of the stray, describing the same by giving marks, natural and artificial, as near as practicable; the name and residence of the finder; and as near as may be, the time at which the same was taken up.

Sec. 4. Every finder of a stray or strays which when taken up, are of the value of ten dollars or more, shall within one month after taking up the same, procure an appraisal thereof by a justice of the peace of his county, which appraisal shall be certified to by such justice, and within the time before mentioned, filed in the office of the clerk of the board of county commissioners; and he shall pay to such justice one dollar for each appraisal and certificate, and ten cents for every mile necessarily traveled in such service.

Sec. 5. If the owner or person entitled to the possession of any stray shall appear at any time within one year after the notice is filed with the clerk as aforesaid, and make out his right thereto, he shall have such stray restored to him upon paying all lawful charges which have been incurred in relation to the same.

Sec. 6. If the owner and the finder of any stray cannot agree upon the amount of such charges, or for the use of any such stray, either party may make application to any justice of the peace of the county where such stray was taken up, to settle the same, and the party making such application shall give notice thereof to the other party, and if any amount shall be found due to the finder by the said justice, over the value of the use of such stray, the same shall be a lien on said stray until paid by the owner; and the costs of such adjudication shall abide the decision of the justice; *Provided* that either party shall have the same right to appeal to the district court as in other cases.

Sec. 7. If the owner or person entitled to the possession of any stray shall not appear and make out his title thereto, and pay the charges thereon within one year from the time when the notice is filed with the county clerk as provided in the fourth section of this chapter, such stray shall be sold at the request of the finder, by any constable of the precinct at public auction, upon first giving public notice thereof in writing by posting up the same in three of the most public places in said precinct, at least ten days before such sale; and the finder may bid therefor at such sale; and after deducting all the lawful charges of the finder as aforesaid, and the fees of the constable, which shall be the same as upon a sale on an execution, one-half of the remaining proceeds of such sale shall be deposited in the treasury of the county, to be disposed of in such manner as the county commissioners may direct, and the other half shall belong to the finder.

SEC. 8. If any person shall, without the consent of the finder, take away any stray taken up pursuant to the provisions of this chapter, without first paying all the lawful charges incurred in relation to the same, he shall be liable to the finder for the value of such stray.

SEC. 9. If the finder of any stray shall neglect to cause the same to be advertised, or a notice thereof to be posted up; or if he shall neglect to procure the appraisal of any stray which shall be of the value of ten dollars or more, or if he shall neglect to perform any of the duties required of him by this chapter, he shall be precluded from acquiring any right of property in such stray by the provisions of this chapter, or receiving any damages or charges for keeping the same, and shall forfeit and pay into the county treasury a sum equal to the value of the stray, to be sued for and recovered by the county treasurer in the name of the county.

Lost money and goods.

SEC. 10. If any person shall find any money or goods of the value of five dollars or more, and if the owner thereof be unknown, such person shall, within five days after finding such money or goods, give notice thereof in writing to the clerk of the board of county commissioners of the county in which such property was found; and shall also within said five days cause a notice thereof to be posted up in two public places in said county.

SEC. 11. Every finder of lost goods of the value of ten dollars or more, shall, in addition to the requirements in the preceding section, within fifteen days after finding the same, cause notice thereof to be published in a newspaper printed in the county, if there be one published therein; and if there be none, then such notice shall be posted up in three of the most public places in the county; and if no person shall appear to claim the same who may be entitled thereto, he shall, within two months after finding such goods, and before using the same to their injury, procure an appraisal thereof by a justice of the peace of his county, which appraisal shall be certified to by such justice, and filed in the office of the clerk of the board of the county commissioners of such county.

SEC. 12. If the owner of such lost money or goods appear within one year after notice given to the clerk as aforesaid, and shall make out his right thereto, he shall have restitution of the same or the value thereof, upon his paying all the costs and charges thereon, including a reasonable compensation to the finder for his trouble.

SEC. 13. If no owner shall appear within one year, then the finder of such lost money or goods, shall pay one-half the value thereof after deducting all legal charges, to the treasurer of the county; and in case such finder shall neglect to pay the same, on demand, after the expiration of the time aforesaid, the same may be sued for and recovered by the said treasurer in the name of the county.

SEC. 14. If any finder of lost money or goods of the value of five dollars or upwards, shall neglect to give notice of the same, and otherwise to comply with the provisions of this chapter, he shall be liable for the full value of such money, or goods; one-half to the use of the county, and the other half to the person who shall sue for the same; and shall also be responsible to the owner for such lost money or goods.

CHAPTER II.

Unclaimed property.

SEC. 1. Whenever any personal property shall be consigned to, or deposited with any forwarding merchant, wharf, ware-house or tavern-keeper, or the keeper of any depot for the reception and storage of trunks, baggage, merchandise, or other personal property, such consignee or bailee shall immediately cause to be entered in a book kept by him, a description of such property, with the date of reception thereof.

SEC. 2. If such property shall not have been left with such consignee or bailee, for the purpose of being forwarded or disposed of according to directions received of such consignee or bailee, at or before the time of the reception thereof, and if the name and residence of the owner of such property be known to the person having such property in his possession, he shall immediately notify the owner by letter directed to him, and deposited in a post-office, of the reception of such property.

SEC. 3. If any such property shall not be claimed and taken away within one year after the time it shall have been so received, the person having possession thereof may at any time thereafter proceed to sell the same in the manner provided in this chapter.

SEC. 4. Before any such property shall be sold, if the name and residence of the owner thereof be known, at least sixty days notice of such sale, shall be given him, either personally or by mail, or by leaving a notice at his residence or place of doing business; but if the name and residence of the owner be not known, the person having the possession of such property, shall cause a notice to be published containing a description of the property for the space of six weeks successively, in a newspaper, if there be one published in the same county; if there be no newspaper published in the same county, then said notice shall be published in a newspaper nearest thereto in the territory; the last publication of such notice shall be at least eighteen days previous to the time of sale

SEC. 5. If the owner or person entitled to such property shall not take the same away, and pay the charges thereon after sixty days notice shall have been given, it shall be the duty of the person having possession thereof, his agent or attorney, to make and deliver to a justice of the peace of the same county, an affidavit setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property be known or unknown.

SEC. 6. Upon the delivery to him of such affidavit, the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall annex to such inventory an order under his hand, that the property therein described be sold by any constable of the precinct where the same shall be at public auction.

SEC. 7. It shall be the duty of such constable receiving such inventory and order, to give ten days' notice of the sale by posting up written notices thereof in three or more places in such precinct, and to sell such property at public auction to the highest bidder in the same manner as provided by law for sales under execution from justices' courts.

SEC. 8. Upon completing the sale, the constable making the same shall indorse upon the order aforesaid, a return of his proceedings thereon, and return the same to the justice, together with the inventory, and the proceeds of sale, after deducting his fees.

SEC. 9. From the proceeds of such sale, the justice shall pay all legal charges that have been incurred in relation to such property, or a rateable proportion of each charge, if the proceeds of said sale shall not be sufficient to pay all the charges; and the balance, if any there be, he shall immediately pay over to the treasurer of the county in which the same shall be sold, and deliver a statement therewith containing a description of the property sold, the gross amount of such sale, and the amount of costs, charges and expenses paid to each person.

SEC. 10. The county treasurer shall make an entry of the amount received by him, and the time when received, and shall file in his office such statement so delivered to him by the justice.

SEC. 11. If the owner of the property sold, or his legal representatives shall, at any time within five years after such money shall have been deposited in the county treasury, furnish satisfactory evidence to the treasurer of the ownership of such property, he or they shall be entitled to receive from such treasurer the amount so deposited with him.

SEC. 12. If the amount so deposited with any county treasurer, shall not be claimed by the owner thereof, or his legal representatives, within the said five years, the same shall belong to the county, and may be disposed of as the board of county commissioners may direct.

SEC. 13. Property of a perishable kind, and subject to decay by keeping, consigned or left in manner before mentioned, if not taken away within thirty days after it shall have been left, may be sold by giving ten days' notice thereof; the sale to be conducted and the proceeds of the same to be applied in the manner before provided in this chapter; *Provided* that any property in a state of decay, or that is manifestly liable immediately to become decayed, may be summarily sold by order of a justice of the peace, after inspection thereof, as provided in section six of this chapter.

SEC. 14. The fees allowed to any justice of the peace, under the provisions of this chapter, shall be three dollars for each day's service; and to any constable the same fees as are allowed by law for sales upon an execution, and ten cents a folio for making an inventory of property.

STALLIONS.

Sec. 1. It shall and may be lawful for any person to take up and geld at the risk of the owner, any stud horse of the age of two years and upwards, that may be found running at large out of the enclosed grounds of the owner or keeper, and if the said horse shall die, the owner shall have no recourse against the person or persons who may have taken up and gelded, or cause to be gelded the said horse, if the same has been done by a person in the habit of gelding, and the owner shall pay the price of so gelding.

Sec. 2. It shall not be lawful for any person or persons to geld any horse above fourteen and a half hands high, that is known to be kept for covering mares; but if any owner or keeper of the covering horse shall wilfully and negligently suffer said horse to run at large out of the enclosed grounds of said owner or keeper, any person may take up the said horse and convey him to his owner or keeper, for which he shall receive two dollars, recoverable before any justice of the peace of the county; for a second offence, double the sum, and for a third offence, said horse may be taken up and gelded as is provided in the preceding section of this act.

Sec. 3. It shall be the duty of any person who shall take up and geld any stud horse, according to the preceding sections of this act, to take all reasonable care of said horse until his wounds shall be healed, and the taker up shall receive from the owner a reasonable compensation for the care and trouble he may have about the said horse; such allowance shall be settled by some justice of the peace who shall take into consideration the trouble and expense of the taker up, if the parties cannot otherwise agree, and the party so taking up and altering, shall have a lien, until paid, upon said horse for his necessary trouble and attention in altering and taking care of him.

Sec. 4. If a stud horse, while running at large out of the enclosed grounds of the owner or keeper, shall injure or damage any other horse by biting or kicking him, or shall do any damage to person or property, of any kind whatever, the owner of such stud horse shall be liable for all damages done by him.

INTEREST.

Sec. 1. Creditors shall be allowed to receive interest at the rate of ten per cent. per annum, when no other rate of interest is agreed upon, for all moneys after they become due, by any instrument of the debtor, in writing; for money lent or money due on settlement of accounts, from the day of liquidating the same, and ascertaining the balance; for money recovered for the use of another, and retained without the owner's knowledge of the receipt; for money due and witheld by an unreasonable and vexatious delay of payment or settlement of accounts, and for all other moneys due, or to become due, for the forbearance of payment, whereof an express promise to pay interest has been made.

Sec. 2. The parties may agree in writing for the payment of interest, not exceeding twenty per cent. per annum, on money due or to become due on any contract.

Sec. 3. Interest shall be allowed on all money due by judgment at law or decree in equity, from the day of rendering them, until satisfaction be made by payment, accord or sale of property; judgments and decrees for money upon contracts bearing more than ten per cent. interest, shall bear the same interest borne by such contract; and all other judgments and decrees for money shall bear ten per cent. per annum, until satisfaction made as aforesaid.

Sec. 4. No person shall directly or indirectly take for the use or loan of money above the rates of interest specified in the three preceding sections, for the forbearance or use of money for one year; and so after those rates for a longer or shorter time, or according to those rates or proportions for the loan of any money.

Sec. 5. If any action shall hereafter be commenced upon any bond, note, mortgage, specialty, agreement, contract, promise, or assurance whatever, which shall be made within this territory, the defendant may, in his answer, show that a higher or greater rate of interest than twenty per cent. per annum was therein or thereby agreed for, or received or taken, and if the answer of the defendant in any such action shall be sustained by a verdict of the jury, or the finding of the court; the court shall render judgment on such verdict or finding, for the real sum of money actually lent or advanced, and interest on the same at the rate of ten per cent. per annum; upon which judgment the court shall cause an order to be made, setting apart the whole interest for the use of the county in which such suit may be brought for the use of common schools, and the same when collected shall be paid over accordingly, and go to and form a part of the common school fund of said county; and the defendant may recover his costs.

Sec. 6. The parties may, in any contract in writing, whereby any debt is secured to be paid, agree that if the interest on such debt be not punctually paid, it shall become a part of the principal, and thereafter bear the same rate of interest as the principal debt.

Sec. 7. The preceding section shall not be so construed as to allow any creditor by agreement, to compound the interest due him on any contract more often than once in a year.

FENCES AND FENCE VIEWERS.

SEC. 1. All fences four and a half feet high, and in good repair, consisting of rails, timber, boards or stone walls, or any combination thereof, and all brooks, rivers, ponds, creeks, ditches and hedges, or other things which shall be equivalent thereto in the judgment of the fence viewers, within whose jurisdiction the same may be, shall be deemed legal and sufficient fences.

SEC. 2. The respective occupants of lands inclosed with fences, shall keep up and maintain partition fences between their own and the next adjoining inclosures, in equal shares, so long as both parties continue to improve the same.

SEC. 3. In case any party shall neglect to repair or rebuild any partition fence, which of right he ought to maintain, the aggrieved party may complain to two or more fence viewers of the county, who, after due notice to each party, shall proceed to examine the same; and if they shall determine that the fence is insufficient, they shall signify the same in writing to the delinquent occupant of the land, and direct him to repair or rebuild the same within such time as they shall judge reasonable; and if such fence shall not be repaired or rebuilt accordingly, it shall be lawful for the complainant to repair or rebuild the same.

SEC. 4. When any deficient fence built up or repaired by any complainant, as provided in the preceding section, shall be adjudged sufficient by two or more of the said fence viewers, and the value of such repairing or building up, together with their fees, shall be ascertained by a certificate under their hands, the complainant shall have a right to demand either of the owner or of the occupant of the land where the fence was deficient, double the sum so ascertained; and in case of neglect or refusal to pay the sum so due for one month after demand thereof be made, the complainant may recover the same with interest at one per cent. a month, in a civil action.

SEC. 5. The fence viewers shall determine all controversies relative to partition fences.

SEC. 6. In all cases where the line upon which a partition fence is to be made, or to be divided, is the boundary line between counties, or partly in one county and partly in another, a fence viewer shall be taken from each county.

SEC. 7. When a partition fence, running into water, is necessary to be made, the same shall be done in equal shares, unless otherwise agreed by the parties; and in case either party shall refuse or neglect to make or maintain the share belonging to him, similar proceedings shall be had, as in case of other fences, and with the like effect.

SEC. 8. No person shall be compelled to make or keep up any fence adjoining land that he does not improve.

SEC. 9. Any person wishing to leave open and unimproved any land that he has heretofore improved, may remove his fence around said land after having given three months notice of his intention to do so to all the adjoining occupants of said land.

SEC. 10. Any person improving land heretofore unimproved, and adjoining land improved by others, shall pay for or build anew his portion of the partition fence.

Fence viewers.

SEC. 11. The supervisors of roads in the several counties of this territory shall be fence viewers in their respective counties.

SEC. 12. Any fence viewer who shall when requested, unreasonably neglect to view any fence or to perform any other duty required of him in this act, shall forfeit the sum of five dollars, and shall also be liable to the party injured for all damages consequent upon such neglect.

SEC. 13. Each fence viewer shall be paid by the person employing him, at the rate of three dollars per day for the time he shall be so employed; and if such person shall neglect to pay the same within thirty days after the service shall have been performed, such fence viewer having performed any such service, may recover in a civil action the amount of such fees.

TAXES.

CHAPTER I.

SEC. 1. All taxes for the support of the government of this territory shall be assessed on polls, and on property valued in equal and rateable proportion, and all property, real and personal, within this territory, not expressly exempted therefrom, shall be subject to taxation in the manner provided by law.

SEC. 2. The terms "real property" and "land," wherever used in this act, shall be held to mean and include not only the land itself, whether laid out into town lots or otherwise, with all things contained therein, but also all buildings, structures, improvements, trees, and other fixtures of whatever kind thereon, and all rights and privileges belonging or in any way appertaining thereto.

SEC. 3. The terms "personal estate" and "personal property" shall be construed to include all household furniture, goods, chattels, money and gold-dust, on hand or on deposit, either within or without this territory; all boats and vessels, whether at home or abroad, and all capital invested therein; all debts due or to become due from solvent debtors, whether on account, contract, note, mortgage or otherwise; all public stocks, and stocks or shares in all incorporated companies, and such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate.

SEC. 4. The following property shall be exempt from taxation:

1. All property, real and personal, of the United States, and of this territory;
2. All public or corporate property of the several counties, cities, villages, towns, and school districts, in this territory, used or intended for corporate purposes;
3. The household furniture of every head of a family, to the amount of three hundred dollars;
4. The personal property of all literary, benevolent, charitable and scientific institutions, incorporated within this territory, and such real estate belonging to such institutions, as shall be actually occupied for the purposes for which they were incorporated;
5. All houses of public worship, and the lots on which they are situated, and the pews or slips, and furniture therein, and all burial grounds, tombs and rights of burial; but any part of any building, being a house of public worship, which shall be kept or used as a store or shop, or for any other purpose, except for public worship or for schools, shall be taxed upon the cash valuation thereof the same as personal property, to the owner or occupant, or to either; and the taxes shall be collected thereon in the same manner as taxes on personal property;
6. All public libraries, and the real or personal property belonging to or connected with the same;
7. The property of all Indians, who are not citizens, except lands held by them by purchase;
8. The personal property of all persons, who by reason of infirmity, age or poverty, may, in the opinion of the assessor, be unable to contribute toward the public charges.

SEC. 5. A poll tax shall be assessed upon every white male inhabitant of this territory, between the ages of twenty-one and fifty years.

Where and to whom property shall be assessed.

SEC. 6. All lands shall be assessed in the county in which the same shall lie, and every person shall be assessed in the county where he resides, when the assessment is made for all real and personal property, then owned by him within such county; but land owned by one person and occupied by another may be assessed in the name of the owner or occupant; and unoccupied land, if the owner is unknown may be assessed as such without inserting the name of any owner.

SEC. 7. The real estate of incorporated companies liable to taxation, shall be assessed in the county in which the same shall lie, in the same manner as the real estate of individuals.

SEC. 8. The undivided estate of any deceased person may be assessed to the heirs or devisees of such person, unless occupied by some other person to whom it may be assessed, without designating them by name, until they shall have given notice to the assessor of the division of the estate, and the names of the several heirs, or devisees; and each heir and devisee shall be liable for the whole of such tax, and shall have a right to recover of the other heirs and devisees, their respective proportions thereof, when paid by him.

SEC. 9. Every person, except as provided in the succeeding section, shall be assessed in the county in which he resides, when the assessment is made for all taxable personal property owned by him, including all personal estate in his possession or under his control, as trustee, guardian, executor, or administrator; and where there are two or more persons jointly in possession, or having the control of any such property in trust, the same may be assessed to either or all such persons, but it shall be assessed in the county where the same shall lie, if either of such persons reside in such county.

SEC. 10. All goods, wares and merchandise, kept for sale in this territory; all stock employed in any of the mechanic arts; and all capital and machinery employed in any branch of manufactures, or other business, within this territory, owned by a corporation out of this territory, or by any persons whether residing in or out of the territory shall be taxable in the county where the same may be, either to the owners thereof, or to the person who shall have charge of, or be in possession of the same.

SEC. 11. Partners in mercantile or other business may be jointly taxed in their partnership name, or severally taxed for their individual shares, for all personal property employed in such business; and in case they are jointly taxed, such partner shall be liable for the whole tax.

SEC. 12. All the stock and personal estate of every incorporated company, liable to taxation, unless otherwise provided, shall be assessed in the name of the company, in the county where the principal transacting financial business office or place shall be; and if such company have no such office or place of transacting financial business, then in the county where its operations shall be carried on; and in collecting any tax on any such stock or personal estate, the personal estate of any such company may be seized and sold, the same as that of individuals; and in case no such property belonging to the company can be found sufficient to satisfy the tax and legal charges, then the personal property of any member thereof may be taken and sold to pay the same.

SEC. 13. The owner or holder of stock in any incorporated company which is taxed on its capital, shall not be taxed as an individual for such stock.

SEC. 14. When personal property is mortgaged, or pledged, it shall, for the purpose of taxation, be deemed the property of the person who has the possession.

Duties of Assessors.

SEC. 15. At the time prescribed by law, the assessor in each county shall ascertain by diligent inquiry, the names of all persons liable to taxation in his county, and also all the taxable personal property, and all taxable real estate therein; and make out an assessment roll of all taxable property, and appraise the same, according to the provisions of the statutes relating thereto.

SEC. 16. Any assessor may, at his discretion, require any person liable to be taxed in his county, to furnish him a list of his real estate, situate in his county liable to taxation, and a list of all his personal property, liable to taxation, in this Territory, and may require such person to make oath, that to the best of his knowledge and belief, such list contains a full and true account, of all his property liable to be taxed in such county; and if any person shall refuse to furnish such list, or to swear to the same, when required so to do by the assessor, such person shall forfeit and pay to the assessor, for the use of the county, the sum of twenty dollars, which sum may be recovered by motion in any court having jurisdiction of matters of debt or contract, to the amount of twenty dollars.

SEC. 17. The assessor shall set down in the assessment roll, in separate columns, and according to the best information he can obtain;

1. The names of all the taxable persons in his county;

2. A description of each tract or parcel of land to be taxed, specifying under separate heads, the township, range and section, in which the land lies; or if divided into lots and blocks then the number of the lot and block.

3. The number of acres and parts of an acre, as near as the same can be ascertained, unless the land be divided into blocks and lots.

4. The full cash value of each parcel of land taxed.

5. The full cash value of all the taxable personal property, owned by or to be taxed to, such person, as provided by law.

6. The total valuation of all property taxed, real and personal.

SEC. 18. When lots are situated in any city, village, or town, a plat of which shall have been recorded, the city, village, or town, in which the same are situate, shall be specified in the assessment roll.

SEC. 19. When any person is assessed as trustee, guardian, executor, or administrator, a designation of his representative character shall be added to his name; and such assessment shall be entered in a separate line from his individual assessment, and he shall be assessed for the real estate, held by him in such representative character, at the full value thereof, and for all personal property, held by him in such representative character.

SEC. 20. If the land assessed be less, or other than a subdivision according to the United States survey, unless the same be divided into lots and blocks, so that it can be definitely described, it shall be described by giving the boundaries thereof, or in such other manner as to make the description certain.

SEC. 21. It shall be sufficient to describe lands in all proceedings relative to assessing, advertising, or selling the same for taxes, by initial letters, abbreviations, and figures to designate the township, range, section, or parts of a section, and also the number of the lots and blocks.

SEC. 22. Unoccupied lands, liable to taxation, when the name of the owner is unknown, shall be described, and the value thereof set down in the assessment roll, in a part thereof, separate from the other assessments, in the same manner that lands of residents are required to be described, and the value thereof designated.

SEC. 23. The assessment roll shall be made out in tabular form, in separate columns, with appropriate heads, after the manner specified below, with such additional columns as may be deemed necessary, varying the same as circumstances may require, but as nearly as convenient in the following form:

ASSESSMENT ROLL,

'or the County of ——, and Territory of Oregon, for the year 185 —; containing all the taxable property, real and personal in said County.

Names of Persons. Taxed.	Description of Land.	Section.	Township.	Range E. or W.	Number of Acres.	Valuation of Real estate.	Valuation of Personal Property.	Total Valuation of all property.	Am't. of Taxes.	Remarks.

LOTS

In the City, (Town or Village,) of ——, described according to the Map thereof, on record in the Office of the Register of deeds of said County.

Names of persons Taxed.	No. of Lots.	Blocks.	Valuation of each Lot.	Valuation of all the Lots.	Valuation of Personal Property.	Total Valuation.	Am't of Tax.	Remarks.

Manner of assessing taxes.

Sec. 24. The board of commissioners of each county, shall at their session in September in each year, examine the assessment roll of their county, and shall have power to correct the same, make alterations in the description of lands or other property upon such roll, when it shall be necessary to render such description conformable to the requirements of this chapter; and may make any other alterations, or corrections in such roll, as they shall deem necessary to make the same conform to the requirements of this chapter.

Sec. 25. The board of commissioners of each county shall, at their session in September, in each year, estimate and determine the amount of moneys to be raised in their county, for county purposes, and apportion such amount, together with the amount of territorial and school tax, required by law to be raised in their county, according to the valuation of taxable property in their county for a year, and such determination shall be entered at large in their records.

Sec. 26. For the purpose of raising a revenue for county purposes, the board of county commissioners of each county in this territory, shall at their session in September in each year, levy a tax on all taxable property in their county, which tax shall be sufficient in amount to defray the expenses of the county.

Sec. 27. In addition to the tax required to be laid by the preceding section, the board of county commissioners shall, at the same time they are required to levy a tax for county purposes, levy a tax of one mill on the dollar, upon all taxable property of their county for territorial purpurposes, which last mentioned tax shall be added to the county tax, and collected at the same time, and in the same manner.

Sec. 28. Within thirty days after the assessment roll of any county has been examined, corrected and approved by the board of county commissioners, the county auditor shall transmit to the territorial auditor a certified copy thereof, under the seal of the board.

Sec. 29. It shall be the duty of the territorial auditor, on receiving such copies of the assessment rolls, to estimate the amount of tax to be collected in each county for territorial purposes, and make a statement thereof, and carefully preserve the same in his office, and he shall also deliver a certified copy of such statement to the territorial treasurer, who shall record the same in a book, kept for that purpose, and the territorial treasurer shall also charge the respective counties, with the amount of tax so ascertained to be raised in each.

Sec. 30. The county auditor shall, within fifteen days after such apportionment, make out two certificates of the several amounts apportioned, to be assessed upon the taxable property of the county, for territorial, county and school purposes, one of which he shall deliver or cause to be delivered to the county treasurer, and the other, with a transcript of the assessment roll aforesaid, shall be delivered to the sheriff of the county, to which certificate and assessment roll thus delivered, shall be attached a warrant in the name of the United States, under the hand of the county auditor, and with the seal of the board of county commissioners thereto attached, commanding the said sheriff to collect the taxes charged in such transcript, by demanding payment of the persons charged therein, and making sale of the goods and chattels mentioned in such transcript, or any other goods and chattels of the respective persons charged therein, if necessary; and that he pay over the moneys collected by him, by virtue of said warrant, to the county treasurer, and return said warrant together with the transcript of the roll aforesaid, and an account of his acts thereon, to the board of county commissioners, on or before the first Monday in April next ensuing the date thereof.

Of Collection and Return of Taxes.

SEC. 31. The sheriff, upon receiving the tax list and warrant, shall proceed to collect the taxes therein mentioned, and for that purpose shall call, at least once on each person taxed, at his usual place of residence, if in the county, and shall demand payment of the taxes charged to him on such list.

SEC. 32. County orders shall be payable for county taxes, in the county where issued, and shall be allowed the sheriff, on his settlement of county taxes with the board of county commissioners, but no sheriff shall receive a larger amount of county orders than the amount of county taxes in his county; and the sheriff shall, in all cases, pay over to the county treasurer, the full amount of territorial and school taxes in gold and silver coin.

SEC. 33. No county treasurer, sheriff, auditor, or commissioner shall, either directly or indirectly, purchase or receive in payment of taxes, or in exchange; or otherwise, in any manner whatever, any county orders, or any demand against his county for a claim allowed, (by the proper officer to allow the same,) during his term of office, for a less amount than that expressed on the face of such order or demand; and any such person so offending shall, on conviction thereof, be fined in a sum not less than one hundred, nor more than three hundred dollars.

SEC. 34. The sheriff shall, on payment to him of any tax, if required, give a receipt for the same, therein describing the lands, or specifying the amount of personal property, on which the same is paid, and shall note on his tax roll, the payment thereof; and if any such sheriff shall wilfully return as unpaid, any tax, which has been paid to him, he shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by imprisonment, not more than six months, or by fine not exceeding five hundred dollars, or both, in the discretion of the court.

SEC. 35. In case any person shall refuse or neglect to pay the tax imposed on him, the sheriff shall levy the same by distress, and sale, of the goods and chattels of such person, wherever the same may be found, within his county.

SEC. 36. The sheriff shall give public notice of the time and place of sale, and of the property to be sold, at least six days previous to the sale, by advertisement, to be posted up in three public places in the county, where such sale shall be made; and the sale shall be at public auction, in the day time, and the property sold shall be present; but at any time previous to the sale, the owner or claimant of such property, may release the same, by the payment of taxes, interest and charges, for which the same is liable to be sold.

SEC. 37. Whenever the purchase money on such sale shall not be paid at such time, as the sheriff shall require, he may, in his discretion, again expose the property for sale, or sue in his name of office such purchaser, for the purchase money, and recover the same with costs, and twenty per cent. damages.

SEC. 38. If property, distrained for taxes, cannot be sold, for want of bidders, the sheriff shall return a statement of the facts; and tax, if unsatisfied, shall be collected, in the same manner, as if no levy had been made.

SEC. 39. If the property distrained shall be sold for more than the taxes, costs and damages, the surplus shall be paid to the owner of such property.

SEC. 40. When any sheriff discovers that any land has been assessed more than once for the same year, he shall collect only the tax justly due thereon, and shall make return of the balance, as a double assessment, and he shall be credited therefor, by the county commissioners.

SEC. 41. If any of the taxes mentioned in the tax list, annexed to his warrant, either on real or personal estate, shall remain unpaid, and the sheriff shall be unable to collect the same, he shall make out a statement of the taxes so remaining unpaid, distinguishing, by setting down separately such as are on real, and such as are on personal estate, with a full and correct description of such real estate, from his tax roll, and the name of the person taxed, if therein specified, and submit the same, by the first day of February after the date of the tax list, to the county auditor; he shall also include in such statement, a description of any land, doubly assessed, and the amount of tax thereon, and the county auditor shall carefully compare such statement with the tax roll, to ascertain that the same is correct.

SEC. 42. The return of the sheriff to the county auditor, of delinquent taxes, shall be made in a tabular form, and may be varied as the facts may require, but when so made, shall be as nearly as may be in the following form:

RETURN

Of ——, Sheriff of the County of ——, and Territory of Oregon, containing a description of the Lands and the Taxes thereon, and the valuation of personal property, and Taxes thereon (if any) assessed in said county in the year ——; which Taxes remain due and unpaid for the year herein specified, to wit:

Names of Persons Taxed.	Description of land & statement of personal property.	Section.	Township.	Range.	No. of acres.	Amount of tax.	Year for which taxes are due.	REMARKS.
						$ c.		
A. B.,	W. half of N. E. qr.,	34	3	19	80	5 60	1833	
C. D.,	Undivid'd two-thirds of N. E. qr.	34	3	19	160	..	..	
Do. unknown,	Do.,	34	3	19	320	..	..	
A. B.,	Personal property. Valuation—$3000.							

A. B.

Sheriff of County.

Sec. 43. The sheriff shall then make an affidavit, to be annexed to such statement, before any officer authorized to administer oaths, that the facts set forth in said statements are correct; that the sums therein returned as unpaid are not paid; and that he has not, upon diligent inquiry, been able to discover any goods, or chattels, belonging to the persons charged with such unpaid taxes, whereon he could levy the same; which statement and affidavit shall be filed with the county auditor, and he shall thereupon be credited by the county auditor, with the amount of taxes, so returned as unpaid and doubly assessed, and he shall be entitled to receive three dollars for making such return, and ten cents per mile travel for one way.

Sec. 44. Upon settlement as aforesaid, of the amount of taxes to be collected by the sheriff, and paid into the county treasury, the county auditor shall make out duplicate certificates in which shall be contained the amount of the delinquent taxes; one of which shall be given to the sheriff, and the other, to the treasurer of the county, and such certificate shall be evidence of the truth of the matter contained therein; and the amount of the delinquent tax, as certified by the said auditor, shall be passed to the credit of the sheriff, by the county treasurer.

Sec. 45. Any sheriff, who shall neglect or refuse to pay over all moneys by him collected for taxes, or shall refuse or neglect to make a return of the delinquent taxes of his county, as required in this chapter, shall be liable to be indicted therefor, and upon conviction on such indictment, may be punished by fine, in any sum, not less than one hundred, nor more than two thousand dollars, or by imprisonment, not less than six months, nor more than three years, or by both such fine and imprisonment, at the discretion of the court.

Sec. 46. On or before the first Monday in February, in each year, the several county treasurers in this territory, shall pay over to the territorial treasurer, in gold and silver coin, the amount of territorial taxes, charged to their respective counties, which territorial tax shall be paid out of the first moneys collected and paid into the county treasury.

Sale of Land for unpaid taxes, and the conveyance and redemption thereof.

Sec. 47. All lands returned to the county auditor, as provided by this chapter, upon which the taxes, interest and charges shall not be paid, by the first day of February next after the return thereof, shall be subject to sale as hereinafter provided.

Sec. 48. The county auditor may at any time within three years after the return by the sheriff of any delinquent taxes, assessed on personal property, make out a warrant, with a list of such delinquent taxes upon personal estate annexed thereto, which warrant shall command the sheriff to proceed to collect the delinquent taxes enumerated in such list, and upon receiving such warrant, the sheriff shall proceed to collect and make return of the same, in the same manner, and under the same responsibilities as in the collection and return of the taxes, mentioned in the original tax list.

Sec. 49. The county auditor shall, immediately after the first day of February in each year, make out a statement of all such lands, containing a brief description thereof, with an accompanying notice, stating that so much of each tract, or parcel of land, described in said statement as may be necessary for that purpose, will, on the second Monday of April next thereafter, and the next succeeding days, be sold by him, at public auction, at some public place that he may select, (naming the same) at the seat of justice of the county, for the payment of the taxes interest and charges thereon; and if in any county, no seat of justice shall have been established, then at such public place, therein as he shall select.

SEC. 50. The county auditor shall cause such statement and notice to be published in a newspaper, printed in his county, if there be such newspaper, and if there be none, then in a newspaper printed in an adjoining county, if there be such newspaper printed therein; but if there be no newspaper printed in the same or an adjoining county, then such statement and notice shall be published in some newspaper, printed at the seat of government of the territory, which statement and notice shall in all cases be published once a week for four successive weeks prior to said second Monday of April, and such auditor shall, also, at least four weeks previous to said day, cause to be posted up copies of said statement and notice, in at least four public places in such county, one of which copies shall be posted up in some conspicuous place in his office.

SEC. 51. Every printer, who shall publish such statement and notice shall, immediately after the last publication thereof, transmit to the county auditor of the proper county, an affidavit of such publication, made by some person to whom the fact of publication shall be known; and no printer shall be paid for publishing any such statement and notice, who shall fail to transmit such affidavit, within six days after the last publication thereof.

SEC. 52. The county auditor shall also make or cause to be made an affidavit, or affidavits, of the posting of such statement and notice as above required, which affidavit, together with the affidavit of publication, shall be carefully preserved by him, and deposited as hereinafter specified.

SEC. 53. On the day designated in the notice of sale, the several county auditor shall commence the sale of those lands, on which the taxes, interest, and charges, shall not have been paid, and shall continue the same from day to day (Sundays excepted) until so much of each parcel thereof shall be sold, as shall be sufficient to pay the taxes, interest, and charges thereon, and all moneys received on such sale, shall be paid into the county treasury.

SEC. 54. The person at such sale offering to pay the taxes, interest, and charges on any tract, or parcel of land for the least quantity thereof, shall be the purchaser of such quantity, which shall be taken from the north side or end of such tract or parcel, and shall be bounded on the south by a line running parallel with the northerly line thereof, if such line be a single straight line, otherwise, the south line, of the portion so sold, shall run due east and west; and in case no bid shall be made for the payment of the taxes, interest, and charges, on any such tract or parcel of land, for a portion thereof, then the whole of such tract or parcel shall be sold.

SEC. 55. The county auditor may in his discretion require immediate payment of every person, to whom any parcel of such land shall be struck off, and in all cases, when payment is not made in twenty-four hours after the bid, he may declare such bid cancelled and sell the land again, or may sue the purchaser for the purchase money, and recover the same with costs and twenty per cent damages; and every person so neglecting or refusing to make payment shall not be entitled, after such neglect, to have any bid made by him received by the county auditor, during such sale.

Sec. 56. If any parcel of land cannot be sold for the amount of taxes, interest, and charges thereon, it shall be passed over for the time being, but shall, before the close of the sale, be re-offered for sale; and if the same cannot be sold for the amount aforesaid, the county auditor shall bid off the same for the county for such amount.

Sec. 57. All lands bid off for the county as provided in the preceding section, shall continue liable to be taxed in the same manner as if they were the lands of individuals; and such taxes, and the interest, and charges thereon, shall be a lien on such lands, and shall be paid out of the county treasury, while such lands belong to the county, but no land so bid off for the county, shall be offered for sale for any taxes levied thereon subsequent to such bid, until it shall have been redeemed, or shall be sold by the county, or the tax certificate, issued by the county, shall have been assessed.

Sec. 58. When any lands, so bid off for any county, shall not be redeemed as provided by law, the county auditor shall execute to the county, in his official name, a deed of release therefor, witnessed and acknowledged in like manner as deeds to individuals, which shall have the same force and effect as conveyances executed by said auditor to individuals for land sold for taxes.

Sec. 59. The board of commissioners of any county may by an order, to be entered on their records, authorize the county auditor, or any other person, to sell and assign the tax certificate, issued for lands bid off for such county, and also to sell and convey by deed, duly executed and delivered, by such auditor, or other person, under his hand and seal, for such county, any such lands for which a deed of release has been executed to the same, as provided in the preceding section.

Sec. 60. When any land is offered for sale for taxes, it shall not be necessary to sell the same as the property of any particular person; and if it should be sold as the property of any particular person, no misnomer of the owner, or supposed owner, or other mistake respecting the ownership of such lands, shall ever affect the sale, or render it void, or voidable.

Sec. 61. The county auditor shall give to each purchaser, on the payment of his bids, and if the same be struck off to the county, then to the county, a certificate, in writing dated the day of the sale, describing the land purchased, the amount paid therefor, and the time when the purchaser will be entitled to a deed; which certificate shall be assignable, and any person's interest therein may be transferred by a written assignment, endorsed upon; or attached to the same; and such assignment shall have the same force and effect as the assignment of bonds, for the conveyance of lands; and such certificate if acknowledged by the county auditor, and certified by a person authorized to take the acknowledgement of deeds, may be recorded in the office of the recorder of deeds of the proper county.

Sec. 62. Every county auditor shall, immediately after the close of any sale of lands for taxes, deposit in his office, all affidavits, notices, and papers, in relation to such tax sale, to be filed and preserved therein; also a statement, containing a particular description of each tract and parcel of land so sold by him, specifying the name of the person to whom sold, the amount for which the same was sold, and the name of the owner if known; and the said auditor shall record such statement in a book to be kept by him for that purpose in his office.

SEC. 63. The county auditor in each county shall at least six months before the expiration of the time limited by law for redeeming lands sold for taxes, cause to be published in a newspaper printed in his county, if there be such newspaper, and if none, then in a newspaper printed in an adjoining county if there be one, but if there be no newspaper printed in the same or an adjoining county, then in a newspaper printed at the seat of government, once a week for twelve successive weeks, a list of all unredeemed lands, specifying each tract or lot, the name of the person to whom assessed if any, and the amount of taxes charged and interest (calculated to the last day of redemption) due on each parcel, together with a notice that unless such lands be redeemed on or before the day limited therefor, specifying the same, they will be conveyed to the purchaser.

SEC. 64. If no newspaper be published in such county, the county auditor shall at least three months previous to the time limited for the redemption of any lands sold for taxes, cause to be posted up, copies of the list and notice, specified in the preceding section, in at least four public places in his county; one of which copies shall be posted up in some conspicuous place in his office.

SEC. 65. The owner or occupant of any lands sold for taxes, or any person for him, may at any time within three years from the date of the certificate of sale redeem the same, or any part thereof or interest therein by paying to the county auditor, of the county where such land was sold for the use of the purchaser, his heirs or assigns, the amount for which such land was sold, and all subsequent charges thereon authorized by the provisions of this act, or such portion thereof as the part or interest redeemed shall amount to, with interest on the amount of the purchase money, at the rate of twenty per cent. per annum, from the date of such certificate; but whenever any land sold for taxes shall be redeemed, within six months after the sale thereof, interest as aforesaid shall be paid for six months: *Provided however*, that in all cases, any such person, may in like manner, redeem any such land, or any part thereof, or interest therein, at any time before the tax deed executed on such sale is recorded, and when so redeemed, such deed shall be void.

SEC. 66. The person wishing to redeem any land sold for taxes, in addition to the amount to be paid by him as specified in the preceeding section, shall before the same shall be redeemed by him, pay all other taxes and charges imposed on the land, or the part thereof, or the interest therein, sought to be redeemed subsequent to such sale, and paid by such purchaser or his assigns prior to redemption, with interest thereon, at twelve per cent. per annum: *Provided*, vouchers or other evidence of the payment of such last named taxes and charges, shall have been deposited with the county auditor of the county where such land is situate or produced to such owner or other person seeking to redeem.

SEC. 67. The lands of minors, or any interest they may have in lands sold for taxes, may be redeemed at any time before such minor becomes of age, and during two years thereafter, and the lands of idiots, insane persons, and married women, so sold, or any interest they may have therein, may be redeemed at any time within five years after such sale, and such redemption, shall be made in the same manner as provided in the last two preceding sections.

SEC. 68. Upon the redemption of any land sold for taxes, by payment to the county auditor, such auditor shall execute to the person so redeeming, a certificate specifying therein the name of the purchaser, the land redeemed, and the amount of the redemption money paid; and such auditor shall also enter on the sale list kept by him, the name of the person redeeming, the sum paid therefor by him, and the time when paid; which certificate, before it shall be evidence of such redemption, shall be presented to the treasurer of the same county, and be countersigned by him; and he shall also make a similar entry on the sale list kept by him, with that above required to be made by such county auditor.

SEC. 69. The county auditor shall on the demand of any person, entitled to any redemption money in his hands, forthwith pay the same to such person; and at the expiration of his term of office shall pay over to his successor in office, all redemption money in his hands.

SEC. 70. Whenever any certificate, given by the county auditor for lands sold for taxes shall be lost, or wrongfully withheld from the owner and such lands shall not have been redeemed, the board of county commissioners may receive evidence of such loss or wrongful detention, and on satisfactory proof of the fact, may cause a deed as aforesaid to be executed to such person as may appear to them the rightful owner of the land described in such certificate; but no such deed if wrongfully or improperly granted shall be binding on the county in respect to any of its covenants, nor shall it vest any right, title or interest in the grantee or his assigns.

SEC. 71. If there shall be a loss or wrongful detention of any such certificate, and the land therein described shall have been redeemed, any person may exhibit to the county treasurer, evidence of such loss or detention, and upon his making the same satisfactorily appear to such treasurer, and upon his executing to him a bond with sufficient security to be approved by the treasurer, that such person will refund such redemption money, with twelve per cent. interest thereon, if any person shall thereafter show his right thereto, such treasurer shall pay such redemption money to the person so executing such bond.

SEC. 72. If any land sold for taxes shall not be redeemed as aforesaid, the county auditor of the county where the same was sold shall, after the expiration of the time prescribed by law for the redemption thereof, on the presentation to him of the certificate of sale, execute in the name of his county, as the clerk of the board of county commissioners, under his hand and seal, to the purchaser, his heirs and assigns, a deed of the land so remaining unredeemed, and shall acknowledge the same; which shall vest in the grantee, an absolute title in fee simple in such lands, subject however to all unpaid taxes, and charges, which are a lien thereon, and to redemption, as provided in this act, and such deed duly witnessed and acknowledged, shall be prima facie evidence of the regularity of all proceedings, from the valuation of the land by the assessor inclusive, up to the execution of the deed, and may be recorded with the like effect as other conveyances of land.

SEC. 73. If the county auditor shall discover before the sale as aforesaid, that on account of irregular assessments, or for any other errors, any such lands ought not to be sold, he shall not offer the same for sale, and if after any certificate shall have been granted, upon the sale of the same as aforesaid, the county auditor shall discover that for any error or irregularity, the lands so sold ought not to be conveyed, he shall not convey the same, and the county treasurer shall on demand refund the amount paid therefor on such sale, and all subsequent taxes and charges paid thereon by the purchaser or his assigns, out of the county treasury.

SEC. 74. If after the conveyance of any land sold for taxes, it shall be discovered, that the sale was invalid, the board of county commissioners shall cause the money paid therefor, on the sale and all subsequent taxes and charges, paid thereon by the purchaser, or his assigns, to be refunded, upon the re-delivery of the deed to be cancelled, and no recovery shall ever be had against the county on the covenants of such deed.

SEC. 75. Whenever on account of any erroneous, or defective description of any land, or any other error or defect, if such land were justly taxable, the same shall have been stricken from the assessment roll or shall have been omitted to be sold at any tax sale, or when so sold, the county auditor shall withhold the tax deed therefor, as provided by law, the board of commissioners shall cause such land to be correctly described, and such uncollected tax to be entered upon the assessment roll of the next succeeding year, but if such lands cannot be correctly described, or if from any other cause the tax so unpaid cannot be collected on the same, the said board shall correct such error as they shall deem best.

SEC. 76. If any person, within two years after the payment of any tax by him can satisfactorily show to the board of county commissioners, that the same was improperly assessed, or was paid by mistake, or was not legally chargeable, the said board shall order the same to be repaid by the county treasurer.

SEC. 77. All taxes assessed on any tract or parcel of land, and all costs, charges, and interest thereon, shall be a lien on such land until paid; and all costs and expenses which shall accrue jointly, or in the ggregate, on two or more parcels of land, shall be apportioned in equal arts upon the several tracts or parcels.

SEC. 78. Each county auditor shall, immediately after the close of ny tax sale of land, under the provisions of this chapter, make out a ull and accurate statement of all lands sold by him for taxes, describing herein each tract or parcel so sold by him, and the amount for which he same was sold, and the amount of money received by him, on such ale, which statement shall be verified by the oath of the county auditor, nd filed in the office of the county treasurer; and the said auditor shall lso immediately after such sale, deposit the amount by him received, n such sale, with the said treasurer; and the said auditor shall also emi-annually make out a statement of all moneys received by him for edeeming lands sold for taxes, and file the same with the county treaurer on or before the first Monday in October and April of each year; nd also at the same time deposit all redemption moneys, then in his hands, and which shall have remained in his hands, unclaimed by the persons entitled thereto, for the period of six months, with said treasurer,

SEC. 79. Whenever any county auditor shall neglect or refuse to comply with the provisions of the preceding section, he shall be deemed guilty of a misdemeanor; and on conviction thereof, shall be fined, in any sum not exceeding one thousand dollars, or imprisoned in the county jail, not exceeding one year, or shall be both fined and imprisoned, in the discretion of the court.

Miscellaneous provisions.

SEC. 80. Any person, who has a lien by mortgage, or otherwise, upon any land on which the taxes have not been paid, may pay such taxes, and the interest and charges thereon; and the receipt of the person authorized to receive such tax shall constitute an additional lien on such land to the amount therein specified, and the interest thereon; and the amount so paid and the interest thereon shall be collectable with, as part of, and in the same manner, as the amount secured by the original lien.

SEC. 81. When any tax on any real estate shall have been paid by, or collected from any occupant or tenant, when there is some other person, who by agreement, or otherwise, ought to pay such tax, or any part thereof, such occupant or tenant, shall be entitled to recover by action the amount, which such person should have paid, with interest thereon; or he may retain the same out of any rent due or accruing from him to such person for real estate, on which such tax is so paid.

SEC. 82. If the county auditor shall, in any year, unavoidably omit or fail to sell any lands returned for delinquent taxes, at the time fixed in this chapter, he shall advertise and sell such lands, on the second Monday in September, next ensuing, and such advertisement, and sale, shall conform in all respects to the provisions of this chapter, and shall be as valid and binding as like sales made on the second Monday in April.

SEC. 83. Whenever the county auditor shall fail to advertise the list of unredeemed land sold for taxes, within the time above specified therefor, the same may be advertised as provided in sections sixty-three and sixty-four of this chapter, at any time thereafter within five years from the time the same were sold, and when so advertised, such auditor shall deed the same, in like manner, and with the same effect, as though they had been advertised, within the time specified in the sixty-fourth section of this chapter.

SEC. 84. Any suit or proceeding for the recovery of lands sold for taxes, except in cases when the taxes have been paid on the land redeemed, as provided by law, shall be commenced within three years from the time of recording the tax deed of sale, and not thereafter.

SEC. 85. If any sheriff shall fail to make settlement of the taxes included in his assessment roll, within the time required by this chapter, the county treasurer shall charge such sheriff five per cent damages, and twelve per cent interest per annum, from the day payment should have been made on the balance of unsettled taxes due from him; and if any sheriff shall withhold the payment of any public moneys collected, or received by him, after the same should be paid, and shall have been demanded, he shall be liable to pay ten per cent damages, and twelve per cent interest, as above specified, on such moneys: which moneys, damages, and interest, may be collected by suit upon the sheriff's bond, for the recovery of the same.

SEC. 86. If any person shall be injured by the false return or fraudulent act of any sheriff, such person shall recover upon suit, brought on the bond of such sheriff, or him and his sureties, double damages, and costs of suit.

SEC. 87. No sale of land for taxes, and no deed made in pursuance thereof, shall be of any validity, if the taxes, for which the same are sold, shall have been paid prior to such sale.

SEC. 88. Whenever any moneys shall have been collected or received by any officer, for any distinct and specified object, no portion of them shall be paid, or applied to any other object or purpose, without due authority, but shall be kept a separate fund for such specified object, and any officer failing to comply with the provisions of this section, shall be liable to a fine, not exceeding five hundred dollars, or to imprisonment in the county jail, not exceeding six months.

SEC. 89. Any officer, who shall neglect or refuse to perform any of the duties, imposed on him by this chapter, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail, not exceeding one year.

SEC. 90. Whenever any county treasurer shall fail to pay into the territorial treasury, any money in his hands for that purpose, at the time prescribed by law, he shall, in addition to the other penalties, be liable to the following:—If he shall so fail for the space of ten days, he shall forfeit to the territory, twenty per cent on the amount withheld; and if he shall fail to pay over such moneys, for the space of thirty days, after such specified time he shall forfeit his office as treasurer, and be deemed a public defaulter.

SEC. 91. As between the grantor and grantee of any land, when there is no express agreement, as to which shall pay the taxes, that may be assessed thereon, before the conveyance, if such land is conveyed at the time, or prior to the date of the warrant authorizing the collection of such taxes, then the grantee shall pay the same; but if conveyed after that date, the grantor shall pay them.

SEC. 92. The entries made in the county treasurer's books, the assessment rolls, and the warrants thereto attached, and the lists of lands sold for taxes, recorded by said treasurer, or by the county auditor, shall be prima facie evidence in all judicial proceedings.

SEC. 93. The auditor of the territory shall from time to time as he may deem proper, cause to be printed blank assessment rolls, and other forms for proceedings required by this chapter, and shall transmit the same, together with such instructions as he shall think useful to the several county auditors in this territory, who shall distribute the same to the assessors of their several counties.

SEC 94. In addition to any fees elsewhere specially allowed for the services to be performed under the requirements of this chapter, the following shall be allowed, to wit: To the county auditor for any deed of land sold for taxes, one dollar and fifty cents, for each additional parcel of land described therein after the first, twenty cents; to the person taking and certifying the acknowledgement of the same, fifty cents; to said auditor for a certificate of redemption, fifty cents; for each additional parcel of land described therein, after the first, twenty cents; to the county auditor for a certificate of sale of lands, one dollar; for each additional parcel of land, described therein after the first, twenty cents.

The county auditor granting such deed or certificate shall include therein, as many parcels of land bid off, owned or redeemed by any person as he may desire, and the above fees shall be paid by such person. To the printers, who shall publish any notice of the time when the redemption of land sold for taxes will expire, for each lot or tract of land, twenty-five cents for all the insertions; for drawing affidavit of publication, twenty-five cents; to the person taking and certifying the same, twenty-five cents.

The fees for publication shall be apportioned equally upon the several parcels of land advertised, and all costs, charges, and interest, imposed by the provisions of this chapter, and paid upon any land, shall be a lien thereon until paid equally with the unpaid taxes.

JUSTICES OF THE PEACE, AND CONSTABLES.

CHAPTER I.

SEC. 1. The qualified voters of each election precinct, in the several organized counties, of this territory, shall, at the time and place of holding the annual elections, elect one or more justices of the peace.

SEC. 2. Each precinct shall be entitled to one justice of the peace; but the board of county commissioners, at the time of organizing such precinct, or at any time afterwards, may, if they deem proper, authorize an additional justice of the peace, to be elected therein.

SEC. 3. No person shall be eligible to the office of justice of the peace, who is not a citizen of the United States, and who has not been a resident of the county, in which he is elected, six months next preceding his election; nor shall any sheriff, coroner, or clerk of the district court, be eligible to, or hold such office.

SEC. 4. The election of justice of the peace shall be conducted, and the return of such election made, in the same manner, as other elections; and every person duly elected shall be entitled to a certificate of election, which may be in the following form:—

Territory of Oregon, } ss.
County of }

I do hereby certify that at an election, held on the day of A.D. 18 , in the precinct of in said county, J. P. was duly elected a justice of the peace.

In testimony whereof, I have hereunto set my hand, with the seal of the board of county commissioners, hereunto affixed this day of A.D. 18 .

C. D.,
Clerk of the board of County Commissioners.

SEC. 5. Every person, elected a justice of the peace, shall within twenty days, after receiving his certificate of election, take an oath before any person, authorized to administer oaths, in the following form:—

Territory of Oregon, } ss.
County of }

I, J. P., do solemnly swear, (or affirm, as the case may be) that I will support the constitution of the United States, and the laws of this territory; that I will administer justice without respect to persons; and faithfully and impartially discharge, and perform all duties, incumbent upon me as a justice of the peace, according to the best of my ability.

J. P.

Subscribed and sworn to, before me, this day of A.D. 18 .

C. D.,
Clerk of the District Court.

Which oath shall be endorsed on the back of the certificate of election, and together with the certificate, filed in the office of the clerk of the district court for the proper county.

SEC. 6. Every person, elected a justice of the peace, shall, at the time of filing his oath of office, with the clerk of the district court, enter into a bond with the board of commissioners of the proper county, with two or more sureties, residents of the county, to be approved by the said clerk of the district court, in the sum of five hundred dollars, conditioned, that he will faithfully pay over, according to law, all moneys which shall come into his hands, by virtue of his office as justice of the peace. Said bond may be in the following form:—

Know all men by these presents, that we, J. P., A. B., and C. D., are held and firmly bound, unto the board of commissioners of the county of , in the territory of Oregon, in the sum of five hundred dollars, for the payment of which, we jointly and severally bind ourselves, our heirs, executors, and administrators.

Sealed with our seals, dated this day of A.D. 18 .

Whereas, the said J. P. has been duly elected a justice of the peace in and for the precinct of in the county of A D. 18 . Now the condition of the above obligation is such, that, if she said J. P. shall faithfully pay over, according to law, all moneys, which shall come into his hands by virtue of his office, as justice of the peace, then this obligation shall be void, otherwise, in full force.

J. P. (L.S.)
A. B. (L.S.)
C. D. (L.S.)

SEC. 7. Such bond shall be filed in the office of the clerk of the district court, and every person aggrieved by a breach of the condition thereof, may, by an action upon the bond, have judgment against the justice, and his sureties, for such sum as he may show himself entitled to, with costs, and interest at the rate of twenty-five per cent per annum; and upon any such judgment, stay of execution shall not be allowed.

SEC. 8. Every justice of the peace shall hold his office for the term of two years, and until his successor is elected and qualified; and every justice heretofore elected, and qualified, shall continue to act as such, until his term of office expires, and until his successor is elected and qualified.

SEC. 9. All vacancies, existing in the office of justice of the peace, whether happening by death, resignation, or otherwise, may be filled by appointment by the board of commissioners of the proper county. Every person so appointed shall hold his office, until the next election; and is required to qualify in the same manner as if he had been duly elected to the office of justice of the peace, under the provisions of this act.

SEC. 10. The jurisdiction of justices of the peace, elected in pursuance of the provisions or this chapter, shall be co-extensive with the limits of the county, in which they are elected or appointed, and no other or greater, whether said county be attached to any other county, for judicial purposes or not. But every justice of the peace shall continue to reside in the precinct for which he was elected or appointed, during his continuance in office.

SEC. 11. When a precinct shall be divided, and any justice of the peace, of the original precinct, shall fall into the new one, he shall continue to discharge the duties of a justice of peace, until his term of office expires, and his successor is elected and qualified.

SEC. 12. If any justice of the peace shall die, resign, or remove out of the precinct, for which he may be elected, or his term of office be in any other manner terminated, the docket, books, records, and papers, appertaining to his office, or relating to any suit, matter, or controversy, committed to him in his official capacity, shall be delivered to the nearest justice in the precinct, who may thereupon proceed to hear, try, and determine such matter, suit, or controversy, or issue execution thereon in the same manner, as it would have been lawful for the justice, before whom such matter, or suit was commenced, to have done.

SEC. 13. Every person, whose duty it is to deliver over the docket, books, records, and papers, as prescribed in the last section, shall forfeit and pay, for the use of the county, fifteen dollars, for every three month's neglect to perform such duty, which sum may be recovered at the suit of any person.

SEC. 14. Every justice of the peace, who shall upon indictment in the district court, be convicted of bribery, perjury, or other infamous crime, or a wilful misdemeanor in office, shall be removed from office.

SEC. 15. The court, before whom any justice may be tried and convicted of any of the offences mentioned in the preceding section, shall enter up an order removing such justice from office, and from the time such order of removal shall be entered, all the authority of such justice shall cease.

Of Constables.

SEC. 16. At each general election, there shall be elected by the qualified electors of each precinct in the several organized counties of this territory, as many constables as there are justices of the peace, elected, or authorized to be elected, in such precinct.

SEC. 17. All vacancies existing in the office of constable, whether happening by death, resignation, or failure to elect, or otherwise, may be filled by appointment by the board of commissioners of the proper county, and every person so appointed shall hold his office until the next election.

SEC. 18. The election of constables shall be conducted, and the return of such election made, and certificates of election issued in the same, as in elections of justices of the peace.

SEC. 19. Every person, elected or appointed a constable, shall within twenty days after receiving his certificate of election, take an oath before any person, authorized to administer oaths, that he will support the constitution of the United States, and the laws of this territory, and faithfully discharge, and perform the duties of his office as constable, according to the best of his ability. Such oath shall be endorsed on the back of the certificate of election or appointment, and filed together with the certificate in the office of the clerk of the district court of the proper county.

SEC. 20. Every person elected or appointed to the office of constable, shall within the time prescribed for filing his oath of office, enter into a bond to the board of commissioners of the proper county, with two or more sureties, residents of the county, to be approved by the clerk of the district court, in the sum of one thousand dollars, conditioned, that he will execute all process to him directed and delivered, and pay over all moneys, received by him by virtue of his office, and in every respect discharge all the duties of constable according to law. The clerk shall endorse thereon his approval of the sureties therein named, and shall file the same in his office.

SEC. 21. Any constable may within his county serve any writ, process, or order lawfully directed to him by any justice of the peace, judge of probate, or coroner, and generally do, and perform, all acts by law required of constables.

COURTS OF JUSTICES OF THE PEACE.

CHAPTER II.

Jurisdiction of Justices of the Peace.

Sec. 1. The jurisdiction of all justices of the peace shall be co-extensive with the limits of the county in which they are elected, and no other or greater, unless otherwise expressly provided by statute.

Sec. 2. Every justice of the peace shall keep his office in the precinct, for which he may be elected, and not elsewhere; but he may issue process in any place in the county.

Sec. 3. No justice of the peace shall hold his office, in the same room, with a practicing attorney, unless such attorney shall be his law partner; and in that case, such partner shall not be permitted to appear or practice as an attorney, in any case tried before such justice of the peace.

Sec. 4. Every justice of the peace, elected in any precinct in this territory, is hereby authorized to hold a court, for the trial of all actions in the next section enumerated, and to hear, try, and determine the same according to law; and for that purpose, where no special provision is otherwise made by law, such court shall be vested with all the necessary powers which are possessed by courts of record in this territory; and all laws of a general nature shall apply to such justice's court, as far as the same may be applicable, and not inconsistent with the provisions of this chapter.

Sec. 5. Every justice of the peace shall have jurisdiction over, and cognizance of, the following actions and proceedings:—

1. Of an action arising on contract, for the recovery of money only, if the sum claimed do not exceed one hundred dollars;
2. Of an action for damages for an injury to the person, or to the real property, or for taking, detaining, or injuring personal property, if the damages claimed do not exceed one hundred dollars;
3. Of an action for a penalty, not exceeding one hundred dollars;
4. Of an action upon a bond conditioned for the payment of money, not exceeding one hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due. When the payments are to be made by instalments, an action may be brought for each instalment, as it shall become due;
5. Of an action on an undertaking or surety bond taken by him, if the amount claimed do not exceed one hundred dollars;
6. Of an action for the foreclosure of any mortgage, or the enforcement of any lien, on personal property, when the debt secured does not exceed one hundred dollars;
7. Of an action for damages for fraud in the sale, purchase, or exchange of personal property, if the damages claimed do not exceed one hundred dollars;
8. Of an action for a forcible, or unlawful detention of lands, tenements, or other possessions;

9. Of an action to try the right of occupancy or possession to a mining claim;

10. To take and enter judgment on the confession of a defendant, when the amount does not exceed one hundred dollars.

Sec. 6. The jurisdiction conferred by the last section shall not however extend to the civil action:—

1. In which the title to real property shall come in question;

2. Nor to a action for the foreclosure of a mortgage, or the enforcement of a lien on real estate;

3. Nor to an action for false imprisonment, libel, slander, malicious prosecution, criminal conversation, seduction, or upon a promise to marry;

4. Nor to any action against an executor or administrator as such.

Commencement of actions: Service and return of process.

Sec. 7. Every justice of the peace shall keep a docket, in which he shall enter:—

1. The titles of all actions commenced before him;

2. The object of the action or proceeding, and if a sum of money be claimed, the amount of the demand;

3. The date of the summons, and the time of its return; and if an order to arrest the defendant be made, or a writ of attachment be issued, a statement of these facts;

4. The time when the parties, or either of them appear, or their non-appearance if default be made;

5. A brief statement of the nature of the plaintiff's demand, and the amount claimed, and if any set-off be pleaded, a similar statement of the set-off, and the amount estimated;

6. Every adjournment, stating at whose request, and for what time;

7. The demand of a trial by jury, when the same is made, and by whom made; the order for the jury, and the time appointed for the trial, and return of the jury;

8. The names of the jury, who appear and are sworn; the names of all witnesses sworn; and at whose request;

9. The verdict of the jury, and when received; if the jury disagree, and are discharged, the fact of such disagreement and discharge;

10. The judgment of the court, and the time when rendered;

11. The time of issuing execution, and the name of the officer, to whom delivered, and an account of the debt, and costs, and the fees due to each person separately;

12. The fact of an appeal having been made and allowed, and the time when;

13. Satisfaction of the judgment, or any money paid thereon, and the time when;

14. And such other entries as may be material.

Sec. 8. Actions may be instituted before a justice of the peace, either by the voluntary appearance, and agreement of the parties, or by the usual process.

Sec. 9. Whenever the plaintiff is a non-resident of the county, the justice may require of him security for the costs, before the commencement of the action; and whenever an action has been commenced by any person, whether a resident of the county or not, the justice may in his discretion, on the application of the defendant, order the plaintiff to give security for the costs; and if the plaintiff refuse to comply with the order, the justice shall dismiss the action.

Sec. 10. All processes issued by justices of the peace shall run in the name of the United States, be dated the day it issued, and shall be signed by the justice granting the same, and shall be directed to the sheriff, or any constable of the proper county.

Sec. 11. In all cases not otherwise specially provided for, the first process shall be a summons, directed to the sheriff or constable, and commanding him to summon the defendant to appear before such justice, at a time and place to be named in the summons, not less than six, nor more than twenty days, before the date thereof, to answer the complaint of the plaintiff.

Sec. 12. The summons shall be served at least five days before the time of appearance therein mentioned, by delivering a copy thereof as follows:

1. If the action be against a corporation, to the president, or other head of the corporation, secretary, cashier or managing agent thereof;

2. If against a person judicially declared of an unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, to such guardian, and to the defendant personally;

3. In all other cases to the defendant personally, or if he be not found to some white person of the family, above the age of fourteen years, at the dwelling house or usual place of abode of the defendant.

Sec. 13. Every constable or sheriff serving any process, shall return thereon in writing, the time and manner of service, and shall sign his name to such return.

Sec. 14. A justice of the peace shall issue a warrant of arrest, as hereinafter prescribed, in the following cases:

1. In an action for the recovery of damages on a cause of action, not arising out of contract, when the defendant is not a resident of the territory, or is about to remove therefrom; or when the action is for a wilful injury to person or to property, the defendant knowing the property to belong to another;

2. In an action for the recovery of money, or damages, on a cause of action, arising upon contract, express or implied, when the defendant is about to depart from the territory, with intent to defraud his creditors;

3. In an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied, or converted to his own use by a public officer, or officer of a corporation, or an attorney, factor, broker, agent, or clerk in the course of his employment as such; or by any other person in a fiduciary capacity, or for misconduct, or neglect in a professional employment.

4. In an action to recover the possession of personal property, unjustly detained, when the property, or any part thereof, has been concealed, removed, or disposed of, so that it cannot be found, or taken by the sheriff or constable, and with intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof;

5. When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation, for which the action is brought, or in

concealing or disposing of the property, for the taking, detention, or conversion of which, the action is brought;

6. When the defendant has removed or disposed of his property or a part thereof, or is about to do so, with intent to defraud his creditors.

But no female shall be arrested in any action, except for a wilful injury to person, or property.

Sec. 15. The warrant of arrest shall be issued when it shall appear to the justice, by the affidavit of the plaintiff, or any other person, that a sufficient cause of action exists, and that the case is one of those mentioned in the last section. The affidavit shall be, either positive, or upon information and belief; and when upon information and belief, it shall state the facts, upon which the information and belief are founded.

Sec. 16. Before issuing the warrant of arrest, the justice shall require a written undertaking on part of the plaintiff, with one or more sureties, to the effect, that if the defendant recover judgment, the plaintiff will pay all costs, that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least two hundred dollars.

Sec. 17. The warrant shall be served by arresting the defendant, and taking him before the justice of the peace, who issued the same; but if such justice at the return thereof be absent, or unable to try the action, or if it be made to appear to him, by the affidavit of the defendant, that he is a material witness in the action for such defendant, or is near of kin to the plaintiff, stating therein the degree, the officer shall immediately take the defendant to the nearest justice of the same county, who shall take cognizance of the action, and proceed thereon as if the warrant had been issued by himself.

Sec. 18. The officer making the arrest shall immediately give notice thereof to the plaintiff, his agent or attorney, and endorse on the warrant, the time of the arrest, and the time of serving notice on the plaintiff.

Sec. 19. When a defendant is brought before a justice on a warrant, he shall be detained in the custody of the officer, until he shall be discharged according to law; but in no case shall the defendant be detained longer than twenty-four hours from the time he shall be brought before the justice, unless within that time, the trial of the action shall be commenced, or unless it has been delayed at the instance of the defendant.

Sec. 20. If the defendant on his appearance demand an adjournment, the same shall be granted, on condition, that he execute and file with the justice an undertaking, with two or more sufficient sureties, to be approved by the justice, to the effect that he will render himself amenable to the process of the court during the pendency of the action; and such as may be issued to enforce the judgment therein; or that the sureties will pay to the plaintiff the amount of any judgment, which he may recover in the action. On filing such undertaking, the justice shall order the defendant to be discharged from custody.

Sec. 21. Every justice issuing any process authorized by this chapter, upon being satisfied that such process will not be executed, for want of an officer, to be had in time to execute the same, may empower any suitable person, not being a party to the action, to execute the same, by an endorsement on the process to the following effect:—

"At the request and risk of the plaintiff, (or defendant, as the case may be,) I authorize A.B. to execute and return this writ."

S. F.,
Justice of the Peace.

And the person so empowered shall thereupon possess all the authority of a constable, in relation to the execution of such process, and shall be subject to the same obligations, and shall receive the same fees for his services.

SEC. 22. If any officer without showing good cause therefor fail to execute any process to him delivered, and make due return thereof, or make a false return, such officer, for every such offence, shall pay to the party injured ten dollars, and all damage such party may have sustained by reason thereof, to be recovered in a civil action founded upon this statute.

SEC. 23. Parties, in justices' courts may prosecute, or defend in person, or by attorney, and any person may act as attorney in justices' courts, except that the constable or sheriff by whom the summons or jury process was served, cannot appear or act on the trial in behalf of either party. The authority of a person to act as attorney for another may be oral or written; but unless admitted by the adverse party, must be proven by the oath of the attorney, or otherwise.

SEC. 24. No action shall be commenced by an infant plaintiff, except by his guardian, or until a next friend for such infant shall have been appointed. Whenever requested, the justice shall appoint some suitable person, who shall consent thereto in writing, to be named by such plaintiff, to act as his next friend, in such action, and who shall be responsible for the costs therein.

SEC. 25. After the service and return of process against an infant defendant, the action shall not be further prosecuted, until a guardian for such infant shall have been appointed. Upon the request of such defendant the justice shall appoint some person, who shall consent thereto in writing, to be guardian of the defendant in defence of the action; and if the defendant shall not appear on the return day of the process, or if he neglect, or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian. The consent of the guardian or next friend shall be filed with the justice, and such guardian for the defendant shall not be liable for any costs in the action.

SEC. 26. The parties shall be entitled to one hour, in which to make their appearance, after the time mentioned in the summons for appearance; but shall not be required to remain longer than that time, unless both parties appear, and the justice, being present, is actually engaged in the trial of another action or proceeding; in such case, he may postpone the time of appearance, until the close of such trial.

Pleadings and Adjournments.

SEC. 27. The pleadings in justices' courts shall take place upon the appearance of the parties, unless they shall have been previously filed, or unless the justice shall for good cause shown, allow a longer time, than the time of appearance.

Sec. 28. The pleadings in justices' courts shall be :—

1. The complaint of the plaintiff, which shall state in a plain and direct manner the facts constituting the cause of action ;

2. The answer of the defendant, which may contain a denial of the complaint or any part thereof and also a statement, in a plain and direct manner, of any facts constituting a defence ;

3. When the answer sets up a set-off, by way of defence, the reply of the plaintiff.

Sec. 29. The pleadings shall be in writing, when the action is for one of the following causes :—

1. For the foreclosure of any mortgage, or the enforcement of any lien on personal property ;

2. For a forcible or unlawful entry upon, or a forcible or unlawful detention of lands, tenements, or other possessions ;

3. To recover the occupancy or posession of a mining claim. In all other cases, the pleadings may be oral or in writing.

Sec. 30. When the pleadings are oral, the substance of them shall be entered by the justice, in his docket ; when in writing they shall be filed in his office, and a reference made to them in his docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended.

Sec. 31. A statement in an answer or reply, that the party has not sufficient knowledge, or information, in respect to a particular allegation in the previous pleading of the adverse party to form a belief, shall be deemed equivalent to a denial.

Sec. 32. When the cause of action, or set-off, arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver the account or instrument, or a copy thereof to the court, and to state that there is due to him thereon, from the adverse party, a specified sum, which he claims to recover or set-off. The court may at the time of pleading require that the original account, or instrument be exhibited to the inspection of the adverse party, with liberty to copy the same ; or if it be not so exhibited, may prohibit its being afterwards given in evidence.

Sec. 33. Every complaint answer or reply shall be verified by the oath of the party pleading ; or if he be not present, by the oath of his attorney or agent, to the effect that he believes it to be true ; the verification shall be oral, or in writing, in conformity with the pleading verified.

Sec. 34. Every material allegation in a complaint, or relating to a set-off in an answer, not denied by the pleading of the adverse party, shall, on the trial, be taken to be true, except that, when a defendant, who has not been served with a copy of the complaint, fails to appear and answer, the plaintiff cannot recover without proving his case.

Sec. 35. Either party may object to a pleading by his adversary, or to any part thereof, that it is not sufficiently explicit to enable him to understand it, or that it contains no cause of action or defence, although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended, and if the party refuse to amend, the defective pleading shall be disregarded.

SEC. 36. A variance between the proof on the trial, and the allegations in a pleading, shall be disregarded as immaterial, unless the court be satisfied that the adverse party has been misled to his prejudice thereby.

SEC. 37. The pleadings may be amended at any time before the trial, or during the trial, or upon appeal, to supply any deficiency, or omission in the allegations or denials, necessary to support the action or defence, when by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court, that an adjournment is necessary to the adverse party, in consequence of such amendment, an adjournment shall be granted. The court may, also, in its discretion, require as a condition of an amendment, the payment of costs to the adverse party.

SEC. 38. To entitle a defendant to any set-off he may have against the plaintiff, he must allege the same in his answer, and the statute, regulating set-offs in the district court, shall in all respects, be applicable on a set-off in a justice's court, if the amount claimed to be set-off be within the jurisdiction of a justice of the peace, and judgment may, in like manner, be rendered by the justice, in favor of the defendant, for the balance found due from the plaintiff.

SEC. 39. When the pleadings of the parties shall have taken place, the justice shall, upon the application of either party, if the defendant be not under arrest, and sufficient cause be shown on oath, adjourn the case for any time not exceeding sixty days. If the adjournment be on account of absence of testimony, it shall be for such reasonable time, as will enable the party to procure such testimony, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice.

SEC. 40. An adjournment, on account of the absence of testimony, shall only be allowed upon affidavit, showing the materiality of the testimony, expected to be obtained, and that due diligence has been used to procure it. Tho justice may also require the party applying to state upon affidavit, the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed.

SEC. 41. The party applying for the adjournment, shall, also, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, be then taken by deposition before the justice, which shall be done accordingly; and the testimony so taken may be read on the trial, with the same effect, and subject to the same objections, as if the witness were produced.

Of Witnesses and Depositions.

SEC. 42. A subpena issued by a justice of the peace shall be valid to compel the attendance of a witness, in a justice's court, if such witness be within twenty miles of the place of trial.

SEC. 43. A subpena may be served by any white person, above the age of eighteen years, by reading it to the witness, or by delivering to him a copy thereof, if he require it, or by leaving a copy at his usual place of abode.

SEC. 44. Whenever it shall appear to the satisfaction of the justice, by proof made before him, that any person duly subpenaed to appear before him, in an action, shall have failed without a just cause to attend, as a witness, in conformity to such subpena, and the party, in whose behalf such subpena was issued, or his agent, shall make oath that the testimony of such witness is material, the justice shall have power to issue an attachment, to compel the attendance of such witness—*Provided* that no attachment shall issue against a witness, unless his fees for mileage, and one day's attendance, have been tendered, or paid, in advance, if previously demanded by such witness from the person, serving the subpena.

SEC. 45. Every such attachment may be directed to any sheriff, or constable, of the county, in which the justice resides, and shall be executed in the same manner as a warrant; and the fees of the officers, for issuing and serving the same, shall be paid by the person against whom the same was issued, unless he show reasonable cause, to the satisfaction of the justice, for his omission to attend, in which case, the party, requiring such attachment, shall pay all such costs.

SEC. 46. Every person subpenaed as aforesaid, and neglecting to appear shall also be liable to the party, in whose behalf he may have been subpenaed, for all damages which such party may have sustained by reason of his non-appearance—*Provided*, that such witness had the fees, allowed for mileage and one day's attendance, paid or tendered to him in advance.

SEC. 47. A party to an action may be examined as a witness, at the instance of the adverse party; and for that purpose may be compelled, in the same manner, and subject to the same rules of examination, as any other witness, to testify at the trial, or appear and have his deposition taken.

SEC. 48. The examination of a party, thus taken, may be rebutted by adverse testimony.

SEC. 49. If a party refuse to attend, and testify at the trial, or give his deposition before trial when required, his complaint, answer, or reply, may be stricken out, and judgment taken against him.

SEC. 50. A party, examined by an adverse party, may be examined on his own behalf, in respect to any matter pertinent to the issue. But if he testify to any new matter, not responsive to the inquiries put to him by the adverse party, or necessary to qualify, or explain his answer thereto; or to discharge, when his answer would charge himself, such adverse party may offer himself as a witness, and he shall be so received.

SEC. 51. Either party, in an action, depending before a justice of the peace, may cause the deposition of a witness therein to be taken, when such witness resides, or is about to go more than twenty miles from the place of trial, or is so sick, infirm, or aged, as to make it probable, that he will not be able to attend at the trial.

SEC. 52. The notice shall be served, and the deposition taken, certified, and returned, according to the law, regulating the taking of depositions, to be read in the district court.

SEC. 53. The justice shall allow every deposition taken, certified, and returned, according to law, to be read on the trial of the cause, in which it is taken, in all cases, where the same testimony, if given verbally before him could have been received; but no such deposition shall be read on the trial, unless it appears to the justice, that the witness whose deposition is so offered:

1. Is dead or resides more than twenty miles from the place of trial; or
2. Is unable, or cannot safely attend before the justice, on account of sickness, age, or other bodily infirmity; or
3. That he has gone more than twenty miles from the place of trial, without the consent or collusion of the party, offering the deposition.

Title to Lands.

SEC. 54. If it appear on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to lands is in question, which title shall be disputed by the other party, the justice shall immediately make an entry thereof, in his docket, and cease all further proceedings in the cause, and shall certify, and return to the district court of the county a transcript of all the entries made in his docket, relating to the case, together with all the process, and other papers relating to the action, in the same manner, and within the same time as upon an appeal; and thereupon the district court shall proceed in the cause to final judgment and execution, in the same manner as if the said action had been originally commenced therein, and the costs shall abide the event of the suit.

Trial by Jury.

SEC. 55. Before the justice shall commence an investigation of the merits of the cause, by an examination of the witnesses, or the hearing of any other testimony, either of the parties may demand of the justice, that the cause be tried by a jury.

SEC. 56. The jury shall consist of six persons, unless the parties agree upon any number of jurors less than six to try the cause, in which case the jury shall consist of such number not exceeding six, as the parties may agree upon.

SEC. 57. The justice shall issue a venire, directed to the sheriff, or any constable of the county where the cause is to be tried, commanding him to summon six (or such number as the parties may have agreed upon) good and lawful men of the county, qualified to serve as jurors in the district court of the same county, who shall be nowise of kin to either party, nor interested in the action, to appear before said justice, at a time and place to be named therein, to make a jury for the trial of the cause, between the parties therein named.

SEC. 58. The sheriff or constable shall execute such venire fairly and impartially, and shall not summon any person, whom he has reason to believe is biassed, or prejudiced for or against either of the parties; he shall summon the jurors personally, and shall make a list of the persons, which he shall certify, and annex to the venire, and return to the justice. If a sufficient number of competent jurors cannot be obtained from the panel returned, the sheriff or constable shall immediately summon others to serve in their place.

Sec. 59. Either party may challenge the jurors, but where there are several parties on either side they shall join in a challenge, before it can be made. The challenges shall be to individual jurors, and shall be peremptory, or for cause. Each party shall be entitled to two peremptory challenges.

Sec. 60. Challenges for cause may be taken on any ground, that would be a good cause of challenge on the trial of an action in the district court. Challenges for cause shall be tried by the justice.

Sec. 61. When the jury is selected, the justice shall administer to them the following oath or affirmation:

"You, and each of you, do solemnly swear (or affirm) that you will well and truly try the matter of difference between A. B., plaintiff, and C. D., defendant, and a true verdict give, according to law and the evidence given to you in court, so help you, God."

Sec. 62. After the jury are sworn, they shall sit together, and shall hear the allegations and proofs of the parties, which shall be delivered publicly in their presence.

Sec. 63. When the jury have agreed on their verdict, they shall deliver the same to the justice publicly, who shall enter it on his docket.

Sec. 64. Whenever a justice shall be satisfied that a jury, sworn in any civil cause before him, having been out a reasonable time cannot agree on their verdict, he may discharge them, and issue a new venire, unless the parties consent that the justice may render judgment on the evidence before him, or upon such other evidence as they may produce.

Sec. 65. Every person, who shall be duly summoned as a juror, and shall not appear, nor render a reasonable excuse for his default, shall be subject to a fine not exceeding ten dollars.

Of judgment.

Sec. 66. Judgment that the action be dismissed without prejudice to a new action, may be entered with costs, in the following cases:

1. When the plaintiff voluntarily dismisses the action before it is finally submitted;

2. When he fails to appear at the time specified in the summons, or upon adjournment, or within one hour thereafter;

3. When it is objected at the trial, and appears by the evidence, that the action is brought in the wrong county; but if the objection be taken and overruled, it shall be cause only of reversal or appeal; if not taken at the trial, it shall be deemed waived, and shall not be cause of reversal.

Sec. 67. When the defendant fails to appear and answer at the time specified, in the summons, or within one hour thereafter, judgment shall be given as follows:

1. When the defendant has been served with a copy of the complaint, judgment shall be given without further evidence, for the sum specified in the summons;

2. In other cases, the justice shall hear the evidence of the plaintiff, and render judgment for such sum only, as shall appear by the evidence

to be just; but in no case, exceeding the amount specified in the summons.

SEC. 68. Upon issue joined, if a jury trial be not demanded, the justice shall hear the evidence, and decide all questions of law and fact, and render judgment accordingly.

SEC. 69. Upon the verdict of a jury, the justice shall immediately render judgment thereon. When the trial is by the justice, judgment shall be entered immediately after the close of the trial, if the defendant has been arrested and is still in custody; in other cases, it shall be entered within three days after the close of the trial.

SEC. 70. If the defendant, at any time before the trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued; but if he do not accept such offer before the trial, and fail to recover in the action a sum, greater than the offer, such plaintiff shall not recover any costs, that may accrue after he shall have been notified of the offer of the defendant, but such costs shall be adjudged against him, and if he recover, deducted from his recovery. But the offer and failure to accept it shall not be given in evidence to affect the recovery otherwise than as to costs, as above provided.

SEC. 71. When the prevailing party is entitled to costs by this chapter, the justice shall add their amount to the judgment, or in case of a failure of the plaintiff to recover, or in case of ~~a~~ dismissal of the action, he shall enter up judgment in favor of the defendant, for the amount of such costs.

Stay of Execution, and filing Transcripts.

SEC. 72. The execution upon a judgment, by a justice of the peace, may be stayed in the manner hereinafter provided, upon reasonable notice to the opposite party; and for the following periods of time, to be calculated from the date of the judgments:—

1. If the judgment be for any sum not exceeding twenty-five dollars, exclusive of costs, one month;
2. If it be for more than twenty-five dollars, two months.

SEC. 73. To entitle any person to such stay of execution, some responsible person, to be approved by the justice, and not being a party to the judgment, must, within five days after the rendering of the judgment, enter into an undertaking before the justice, to the adverse party, in a sum, sufficient to secure the payment of the judgment, and costs, conditioned to be void upon such payment at the expiration of the stay.

SEC. 74. Such undertaking shall be signed by the person entering into the same, and may be in the following form:—

Whereas A.B has obtained a judgment before J.P., one of the justices of the peace, in, and for county, on the day of , 18 , against C.D., for dollars: Now therefore I, E.F., acknowledge myself bound to A.B., in the sum of dollars; this undertaking to be void, if such judgment shall be paid at the expiration of month, after the time it was rendered.

Dated the day of 18 . E.F.

Sec. 75. If at the expiration of such stay the judgment be not paid, the execution shall issue against both the principal and bail; if the principal do not satisfy the execution, and the officer cannot find sufficient property, belonging to him upon which to levy, he shall levy upon the property of the bail, and in his return shall state what amount of money, collected by him on the execution, was collected from the bail, and the time when the same was received.

Sec. 76. After the return of such execution, the bail shall be entitled on application to the justice, to have the judgment, or so much thereof as may have been collected from him, in satisfaction of the execution, transferred to his use, and he may collect the same from the defendant, by execution, together with interest at the rate of twelve per cent. per annum.

Sec. 77. If a judgment be stayed, in the manner above provided after an execution has been issued thereon, the justice shall revoke such execution, in the same manner, and with like effect, as he is hereinafter directed to revoke an execution, after an appeal has been allowed; and if the defendant have been committed, shall order him to be discharged from custody.

Sec. 78. Every justice on demand of any person, in whose favor, he shall have rendered judgment for more than ten dollars, exclusive of costs, shall give to such person, a certified transcript of such judgment, and the clerk of the district court of the county, in which the judgment was rendered, shall, upon the production of any such transcript, file the same in his office, and forthwith enter such judgment in the docket of the judgments of the district court, and shall note therein, the time of filing such transcript.

Sec. 79. Every such judgment, from the time of filing the transcript thereof, shall have the same lien on the real estate of the defendant in the county, as a judgment of the district court of the same county; shall be equally under control of the district court, and shall be carried into execution in the same manner, and with like effect, as the judgments of such district court; but no execution shall be issued thereon out of the district court, until an execution shall have been issued by a justice, and returned that the defendant has no goods, or chattels whereon to levy the same.

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Setting-off Judgments.

Sec. 80. If there be mutual justices' judgments between the same parties, upon which the time for appealing has elapsed on judgment, on the application of either party, and reasonable notice given to the adverse party, may be set-off against the other, by the justice, before whom the judgment, against which the set-off is proposed, may be.

Sec. 81. If the judgment, proposed as a set-off, was rendered before another justice, the party, proposing such set-off, shall produce before the justice, a transcript of such judgment, upon which there is a certificate of the justice, before whom such may be, that it is unsatisfied in whole, or in part, and that there is no appeal, and such transcript was obtained, for the purpose of being set-off against the judgment to which it is offered as a set-off. The justice, granting such trancript, shall make an entry thereof in his docket, and all further proceedings on such judgment shall be stayed, unless such transcript be returned, with the proper justice's certificate thereon, that it has not been allowed in set-off.

Sec. 82. If any justice shall set-off one judgment against another, he shall make an entry thereof, in his docket, and execution shall issue only for the balance which may be due after such set-off. If a justice shall allow a transcript of a judgment, rendered by another justice, to be set-off, he shall file such transcript among the papers, relating to the judgment, in which it is allowed in set-off; if he shall refuse such transcript, as a set-off, he shall so certify on the transcript, and return the same to the party who offered it.

Of executions, and proceedings thereon.

Sec. 83. Execution, for the enforcement of a judgment in a justice's court, may be issued on the application of the party entitled thereto, in the manner hereinafter prescribed, but after the lapse of five years from the date of the judgment, no execution shall issue, except by leave of the justice, before whom such judgment may be, upon reasonable notice to the defendant.

Sec. 84. When any judgment shall have been rendered by any justice of the peace, and the same shall not be satisfied, during his continuance in office, and the docket of such justice shall have been transferred to another justice, or to the successor of the justice rendering such judgment, the justice, to whom the docket shall be delivered, shall issue execution upon such unsatisfied judgment, in the same manner, and with like effect, as if he himself had rendered the judgment.

Sec. 85. If the defendant have not goods, and chattels, in the county, in which judgment was rendered, sufficient to satisfy the execution, the justice, before whom such judgment may be, shall, at the request of the party entitled, make out a certificate transcript of the same, which may be delivered to a justice in any other county, who shall make an entry thereof in his docket, and issue execution thereon for the amount of the judgment, or such part as shall be unsatisfied, with costs, as in other cases.

Sec. 86. The execution shall be directed (except when it is otherwise specially provided) to the sheriff or any constable of the county, where the justice resides; shall be dated on the day it is issued, and made returnable within thirty days from the date; and shall be against the goods and chattels of the person, against whom the same is issued.

Sec. 87. Before any execution shall be delivered, the justice shall state in his docket, and also on the back of the execution, the amount of the debt, or damages and costs, and of the fees due to each person separately, and the officer receiving such execution shall endorse thereon the time of the reception of the same.

Sec. 88. If an execution be not satisfied, it may, at the request of the plaintiff, be renewed from time to time, by the justice who issued the same, or the justice, to whom his docket is transferred, by an endorsement thereon to that effect, signed by him, and dated when the same shall be made. If any part of such execution has been satisfied, the endorsement of renewal shall express the sum due on the execution.

Every such endorsement shall renew the execution in full force in all respects for thirty days, and no longer, and an entry of such renewal shall be made in the docket of the justice.

SEC. 89. The officer, after taking goods, and chattels into his custody, by virtue of an execution, shall without delay give public notice by at least three advertisements, put up at three public places in the county, of the time and place, when and where, they will be exposed to sale; such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

SEC. 90. At the time and place so appointed, if the goods and chattels be present, for the inspection of bidders, the officer shall expose them to sale at public vendue to the highest bidder; he shall return the execution and have the money before the justice, at the time of making such return, ready to be paid over to the persons respectively entitled thereto.

SEC. 91. No officer shall directly or indirectly purchase any goods, or chattels, at any sale, made by him upon execution; and every such purchase shall be absolutely void.

SEC. 92. If the action be one, in which the defendant might have been arrested upon a warrant, an execution against the person of such defendant may be issued, after the return of an execution, against his property, unsatisfied in whole, or in part. An execution against the person may likewise be issued after such return, where the defendant has been arrested, upon a warrant, and not discharged according to law.

SEC. 93. If there be no property found, or if the goods and chattels levied on be not sufficient to satisfy such executon, the officer shall, on demand of the plaintiff, summon in writing as garnishees such persons as may be named to him by the plaintiff, or his agent, to appear before the justice, on the return day of the execution, to answer such interrogatories as may be put to them, touching their liabilities as garnishees; and the like proceedings shall be had thereon, before the justice, to final judgment, and execution, as in proceedings by attachment.

SEC. 94. Any justice of the peace may issue an execution, against the plaintiff, to collect fees, and costs, for which such plaintiff may be liable, after an execution has been first issued against the defendant, and returned "no property found."

SEC. 95. If any property levied on be claimed by any person, other than the defendant in the execution, the sheriff or constable shall summon from his county six persons, qualified as jurors between the parties to try the validity of the claim; such officer shall also give reasonable notice of the claim, and of the time of trial to the plaintiff, who may appear and contest the claim, before the jury. The jury, and the witnesses of the parties, shall be sworn by the officer, and if their verdict be in favor of the claimant, the officer may relinquish the levy unless the plaintiff give him a sufficient indemnity for proceeding thereon. The fees of the jury, the sheriff or constable and the witnesses shall be the same as for similar services in a justice's court, and shall be paid by the claimant if the verdict be against him; otherwise by the plaintiff. On the trial the defendant, and the claimant, may be examined as witnesses by the plaintiff.

SEC. 96. If at any time before the jury retire, the claimant withdraws his claim, the trial shall proceed no further, and the claimant shall pay the costs of such unfinished trial.

Sec. 97. Nothing contained in the last two sections shall be so construed as to prevent the claimant of property, levied on by execution, from resorting to any legal remedy he may choose to pursue, instead of proceeding in the manner therein prescribed.

Of Replevin.

Sec. 98. The plaintiff, in an action to recover the possession of personal property, may, at the time of issuing the summons, or at any time before, answer, claim the immediate delivery of such property, as provided in this chapter.

Sec. 99. When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing :—

1. That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof by virtue of a special property therein, the facts in respect to which shall be set forth ;
2. That the property is wrongfully detained by the defendant ;
3. The alleged cause of the detention thereof, according to his best knowledge, information and belief ;
4. That the same has not been taken for a tax, assessment or fine, pursuant to a statute, or seized under an execution, or attachment against the property of the plaintiff, or if so seized, that it is by statute exempt from such seizure ; and
5. The actual value of the property.

Sec. 100. The justice shall thereupon, by an endorsement in writing upon the affidavit, order the sheriff, or any constable of the county to take the same from the defendant and deliver it to the plaintiff, upon receiving a proper undertaking.

Sec. 101. Upon the receipt of the affidavit and order, with a written undertaking, executed by two or more sufficient sureties, approved by the sheriff or constable, to the effect, that they are bound in double the value of the property as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum, as may for any cause be recovered against the plaintiff, the sheriff or constable shall forthwith take the property described in the affidavit, if it be in the possession of the defendant, or his agent, and retain it in his custody. He shall also without delay serve on the defendant a copy of the affidavit, order and undertaking, by delivering the same to him personally, if he can be found within the county, or to his agent from whose possession the property is taken, or if neither can be found in the county, by leaving them at the usual place of abode of either, within the county, with some person of suitable age and discretion, or if neither have any known place of abode in the county, by putting them into the post office, directed to the defendant, at the post office nearest to him.

Sec. 102. The defendant may, within two days after the service of a copy of the affidavit, order and undertaking, give notice to the officer, that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify upon one day's notice before the justice; and the officer shall be responsible for the sufficiency of the sureties until the objection to them is either waived as above provided, or until they justify. If the defendant except to the sureties, he cannot reclaim the property as provided in the next section.

SEC. 103. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the officer a written undertaking, executed by two or more sufficient sureties, to the effect, that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him, of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required, within two days after the taking and serving of notice to the defendant, it shall be delivered to the plaintiff, except as provided in this chapter.

SEC. 104. The defendant's sureties, upon one day's notice to the plaintiff, or his attorney, shall justify before the justice, and upon such jurisdiction, the officer shall deliver the property to the defendant. The officer shall be responsible for the defendant's sureties, until they justify, or until the justification is completed or expressly waived, and may retain the property until that time, but if they, or others in their place fail to justify at the time appointed, he shall deliver the property to the plaintiff.

SEC. 105. If the property, or any part thereof be concealed in a building or enclosure, the officer shall publicly demand its delivery, and if it be not delivered, he shall cause the building or enclosure to be broken open, and take the property into his possession.

SEC. 106. When the officer shall have taken property, as in this chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking and his necessary expenses for keeping the same.

SEC. 107. If the property taken be claimed by any other person than the defendant, or his agent, and such person make affidavit of his title thereto, or his right to the possession thereof, stating the ground of such title or right, and serve the same upon the officer, before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the officer against such claim, by an undertaking executed by two sufficient sureties, accompanied by their affidavits they are each worth double the value of the property, as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and freeholders or householders of the county; and no claim to such property by any other person than the defendant or his agent, shall be valid against the officer unless made as aforesaid; and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

SEC. 108. The officer shall return the order and affidavit, with his proceedings thereon, to the justice within five days, after taking the property mentioned therein.

Of Attachment.

SEC. 109. In an action for the recovery of money the plaintiff, at the time of issuing the summons, or at any time before judgment, may have the personal property of the defendant attached, in the manner hereinafter prescribed, as a security for the satisfaction of such judgment as he may recover.

SEC. 110. A writ of attachment shall be issued by the justice, before whom the action is brought, whenever the plaintiff, his agent, or attorney, shall make affidavit, that a cause of action exists against such defendant, specifying the amount of such claim, over and above all legal set-offs, and the nature thereof, and that as the affiant verily believes the defendant is either,

1. A foreign corporation;
2. That he is not a resident of this territory, or has departed therefrom, with the intent to delay or defraud his creditors, or to avoid the service of a summons;
3. That he has assigned, secreted or disposed of, or is about to assign, secrete or dispose of his property, or any part thereof, with the intent to delay or defraud his creditors; or
4. That the debt was fraudulently contracted.

SEC. 111. A copy of the affidavit, required by the last section, shall be attached to the writ, upon issuing the same. Before executing such writ, the sheriff, or constable, to whom it is directed, shall require a written undertaking on the part of the plaintiff, with one or more sureties, in a sum not less than fifty dollars, nor exceeding the amount claimed by the plaintiff, to the effect, that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain, by reason of the attachment, not exceeding the sum specified in the undertaking.

SEC. 112. The writ shall be directed to the sheriff, or any constable of the county, in which such writ shall have been issued, and shall require him to attach, and safely keep all the personal property of such defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, as stated in the affidavit, together with costs and expenses.

SEC. 113. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits thereon, all debts due such defendant, and all other personal property of such defendant, not exempt from execution, may be attached, and if judgment be recovered against him, be sold or collected, to satisfy the judgment, or execution.

SEC. 114. The sheriff, or constable, to whom the writ is directed and delivered, shall execute the same without delay, as follows:—

1. Personal property, capable of manual delivery to such officer, shall be attached by taking it into his custody;
2. Stock, or shares, or interest in stock or shares of any corporation, or company, shall be attached, by leaving with the president, or other head of the same, or the secretary, cashier, or managing agent thereof, a copy of the writ and affidavit, and a notice that the stock, or interest of the defendant is attached in pursuance of such writ;

3. Debts, and credits, and other personal property not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession, or under his control such credits, or other personal property, a copy of the writ and affidavits, and a notice that the debts owing by him to the defendant, or the credits, and other personal property in his possession, or under his control belonging to the defendant, are attached in pursuance of such writ.

SEC. 115. All persons, having in their possession or under their control any credits, or other personal property, belonging to the defendant, at the time of service upon them of a copy of the writ, affidavit and notice, as provided in the last section, shall, unless such property be delivered up or transferred, or such debts be paid to the sheriff, or constable, be liable to the plaintiff for the amount of such credits, property, or debts, until the attachment be discharged, or any judgment, recovered by him be satisfied.

SEC. 116. Debts, and credits attached, may be collected by the sheriff, or constable, if the same can be done without suit, and the receipt of such officer shall be a sufficient discharge for the amount paid. Such officer shall sell any perishable property, which may be attached, in the same manner, in which property is sold on execution. Money collected, and the proceeds of such sale, shall be retained by the officer to answer any judgment that may be recovered in the action.

SEC. 117. The sheriff or constable, may deliver any of the property attached to the defendant, or to any other person claiming it, and in whose possession it was attached, upon his giving a written undertaking therefor, executed by two or more sufficient sureties, in double the value of the property, engaging to deliver it, or pay the value thereof to the sheriff, or constable, to whom execution upon a judgment, obtained by the plaintiff in that action, may be issued.

SEC. 118. If an action be brought upon such undertaking, against the principal, or his sureties, it shall be a defence, that the property, for which the undertaking was given, did not at the execution of the writ of attachment, belong to the defendant, against whom it was issued.

SEC. 119. If any personal property attached be claimed by a third person, as his property, the sheriff or constable may summon a jury to try the validity of such claim, and the same proceedings shall be had thereon, with the like effect, as in case of a seizure upon execution.

SEC. 120. When the sheriff, or constable, with a writ of attachment, against the defendant, shall apply to any person, mentioned in the second or third sub-divisions of section one hundred and fourteen, for the purpose of attaching the personal property mentioned therein, such person shall furnish him with a certificate, designating the number of shares of the defendant in the stock of the corporation, or company, with any dividend or incumbrance thereon, or the amount and description of the property, or credits held by such corporation, company, or person, for the defendant, or the debt owing to the defendant. Such certificate shall be verified by the oath of the person giving the same, which oath may be administered by the officer having the writ of attachment, or by any other officer authorized to administer oaths.

SEC. 121. If such person refuse to give the certificate required in the last section, or if his certificate be unsatisfactory to the plaintiff, he may be required by an order of the justice, who issued the writ of attachment, to appear before such justice at a time therein stated, not less than three days thereafter, and be examined on oath concerning the same.

SEC. 122. At any time after the making of such order, the plaintiff may exhibit written allegations and interrogatories, touching the property, stock, or credits of the defendant in the possession of, or held by such person, or corporation as garnishee, or debts owing by him or it, and such garnishee shall be required to make full, direct, and true answers to the same on oath.

SEC. 123. On the day when the garnishee shall be required to attend before the justice, he shall exhibit on oath, his answer to the allegations and interrogatories of the plaintiff, unless for cause shown a further time shall be allowed; in default of such answer, the plaintiff may take judgment by default against him, or the justice may punish him as for a contempt.

SEC. 124. Such judgment by default may be proceeded on to final judgment, in like manner as in actions against defendants, but no final judgment shall be rendered against the garnishee, until there shall be final judgment against the defendant, and in no case for a greater amount than that sworn to by the plaintiff, with interest and costs.

SEC. 125. The plaintiff may except to the answer of the garnishee for insufficiency, and if the same shall be adjudged insufficient, the justice may allow the garnishee to amend his answer, in such time and on such terms as may be just, or the plaintiff may take judgment by default, or move the justice to attach the body of the garnishee, to compel a sufficient answer.

SEC. 126. The plaintiff may deny the answer of the garnishee, in whole or in part, and the issues shall be tried as ordinary issues between plaintiff and defendant. If the answer be not excepted to or denied in such time, as the justice may deem proper, it shall be taken to be true and sufficient.

SEC. 127. If by the answer not excepted to or denied, or if upon trial it shall appear that the garnishee is possessed of property and effects of the defendant, or is indebted to the defendant, the value of such property or effects, or of the debt, being ascertained, judgment may be rendered against the garnishee, for the proper amount in money, and in such case the justice may make him a reasonable allowance for his trouble in answering, to be paid out of the fund confessed in his hands.

SEC. 128. Whenever any property, effects, money, or debts, belonging or owing to the defendant, shall be confessed or found by the justice, or jury, to be in the possession of the garnishee, he may at any time before final judgment, discharge himself by delivering the same to the sheriff or constable.

SEC. 129. The defendant or claimant may be required to attend before the justice, or jury, for the purpose of giving any necessary information respecting the property attached, and may thereupon be examined on oath concerning the same.

SEC. 130. In all cases of controversy between the plaintiff and garnishee, the parties may be adjudged to pay or recover costs, as in ordinary cases between plaintiff and defendant.

SEC. 131. If judgment be recovered by the plaintiff against the defendant in such action, the sheriff or constable shall satisfy the same out of the property attached, if it be sufficient for that purpose:

1. By paying to the plaintiff the proceeds of all sales of perishable property, sold by him, or of any debts or credits, collected by him, or so much as may be necessary to satisfy the judgment;

2. If any balance remain due, and an execution shall have been issued on the judgment, he shall sell under the execution, so much of the property as may be necessary to satisfy the balance, if enough for that purpose remain in his hands; and in case of the sale of any rights or shares in the stock of a corporation or company, the sheriff, or constable, shall execute to the purchaser a certificate of the sale, and the purchaser shall thereupon have all the rights and privileges in respect thereto, which were had by the defendant. Notices of the sales shall be given, and the sales conducted as in other cases of sales on execution.

SEC. 132. If, after selling all the property attached by him remaining in his hands, and applying the proceeds to the payment of the judgment and costs, any balance shall remain due, the sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment and all the costs of the proceedings shall have been paid, the sheriff, or constable shall deliver over to the defendant, the residue of the attached property, or the proceeds thereof.

SEC. 133. If the defendant recover judgment against the plaintiff any undertaking received in the action, all the proceeds of sales, and money collected by the sheriff or constable, and all the property attached, remaining in the hands of the sheriff or constable, shall be delivered to the defendant or his agent, and the order of attachment shall be discharged.

SEC. 134. The defendant may also at any time before the time for answering expires apply on motion to the justice to discharge the attachment on the ground, that the writ was improperly issued.

SEC. 135. If the motion be made upon affidavit on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those, on which the writ of attachment was issued. If upon such application, it shall satisfactorily appear that such writ was improperly issued, it shall be discharged.

SEC. 136. Whenever the defendant shall not be a resident of the territory, or shall have departed therefrom with the intent to delay or defraud his creditors, or to avoid the service of process, and he cannot be summoned, and the property of such defendant shall have been attached, the justice shall enter an order in his docket, requiring the plaintiff to give notice to the defendant by publication, for four weeks successively in a newspaper printed in the county, or if there be none such, then in some newspaper to be designated by the justice, that a writ of attachment has been issued against him, and his property attached to satisfy the demand of the plaintiff; and that unless he appear before the justice at some time and place, to be mentioned in said notice, not less than forty-five, nor more than ninety days from the date thereof, judgment will be rendered against him, and his property sold to pay the debts.

SEC. 137. The notice may be in the following form:—

Territory of Oregon, } ss. In justice's court.
County of }

To

You are hereby notified that a writ of attachment has been issued against you, and your property attached, to satisfy the demand of amounting to ; Now unless you shall appear before J. P., a justice of the peace in and for said county, at his office, on the day of 18 , judgment will be rendered against you, and your property sold to pay the debt.

Dated this day of A.D., 18 .

Plaintiff.

Sec. 138. The last publication shall be at least two weeks before the expiration of the time, at which the defendant is required to appear.

Sec. 139. When the defendant shall be notified as aforesaid, and shall not appear and answer to the action, the plaintiff may proceed thereon to final judgment, as in actions commenced by summons; but no execution shall be issued on such judgment against the defendant, nor debts attached be paid to the plaintiff, until such plaintiff, or some person in his behalf, shall enter into a written undertaking, with one or more sufficient sureties, to be approved by the justice, in double the amount of the judgment, to the effect that, if the defendant shall, within one year from the rendition of such judgment, appear and disprove the debt and damages, adjudged against him, or any part thereof, the plaintiff will refund the whole, or such part thereof, as may be found not justly due to him in a review of the case.

Sec. 140. The earnings of the defendant for personal services, at any time within sixty days, next preceding the judgment against the garnishee shall not be included in such judgment, nor be liable to attachment, when it shall be made to appear by the affidavit of the defendant, or otherwise, that such earnings are necessary for the use of a family, supported wholly or partly by his labor.

Sec. 141. No territorial or county treasurer, sheriff, constable, or other public officer shall be liable to answer as garnishee, for moneys in his possession, or under his control, as such public officer, belonging to or claimed by any defendant.

Sec. 142. When the writ of attachment shall be fully executed or discharged, the sheriff or constable shall return the same, with his proceedings thereon to the justice before whom the action was brought.

Forcible Entry and Detainer.

Sec. 143. No person shall make entry into lands, tenements, or other possessions, but in cases where entry is given by law, and in such cases he shall not enter with force, but only in a peaceable manner.

Sec. 144. When any forcible entry shall be made, or when an entry shall be made in a peaceable manner, and the possession shall be unlawfully held by force the person entitled to the premises may be restored to the possession thereof in the manner hereinafter provided.

Sec. 145. The person entitled to the possession of the premises may make complaint in writing, and on oath to a justice of the peace of the county in which the premises are situated, setting forth that the person complained of is in possession of the lands or tenements in question, describing them, and that he entered into the same with force, or that he unlawfully holds the same by force, as the case may be, and the time when.

Sec. 146. Upon receiving such a complaint, the justice shall issue a summons directed to the sheriff, or any constable of the county, commanding him to summon the person, or persons, against whom such complaint shall have been made, to appear before the justice on a day in such summons named.

Sec. 147. The summons shall be served by the officer, as in other cases, and at the same time a copy of the complaint shall in like manner be served on the defendant; the officer shall in his return state the time and manner of such service.

Sec. 148. The justice shall, at the time of issuing the summons, issue a venire to the sheriff or constable commanding him to summon six good and lawful men, qualified to serve as jurors, to appear at the time and place appointed, for the trial of the complaint to be a jury in the case. Such venire shall be returned on or before the day appointed for the trial, and the officer shall endorse thereon the list of jurors summoned.

Sec. 149. If a sufficient number of jurors do not attend, or attending are set aside, by challenging peremptorily, or for cause, the justice may order the sheriff or constable to complete the number by summoning other jurors.

Sec. 150. If the plaintiff fail to attend at the time appointed for hearing the complaint, in person, by agent or attorney, and prosecute his action, he shall be non-suited, and the defendant shall recover his costs.

Sec. 151. If the defendant fail to appear at the time appointed for hearing the complaint, the justice may proceed ex parte, or adjourn the cause at his discretion, but he shall not adjourn for a longer time than ten days, nor to any other place, than that named in the summons for the hearing of the cause.

Sec. 152. If the defendant appear, he shall, before the trial, file his answer in writing, and under oath, in which he shall set forth all matters in excuse, justification, or avoidance of the allegations in the complaint.

Sec. 153. The jury shall consist of six persons, unless the parties agree on a less number, and when duly empanneled and sworn, the justice shall cause the complaint to be read to them, and then call on the plaintiff, to support the same by proof, but the plaintiff shall not be required to make further proof of the forcible entry and detainer, than that he was lawfully possessed of the premises, and that the defendant unlawfully entered, and detains the same.

Sec. 154. If the jury on the trial find the defendant guilty, the justice shall record the verdict, and give judgment thereon, with costs, and also issue a writ of restitution, directed to the sheriff, or constable, to cause the plaintiff to be repossessed of the premises, to which shall be added a clause commanding the officer to levy the costs, off the goods and chattels of the defendant.

SEC. 155. The verdict of the jury shall be in writing, and shall be in the form, or to the effect following:—

"We the jury find the defendant guilty (or if in favor of the defendant, "not guilty") of said forcible entry and detainer in manner and form as the plaintiff in his complaint hath alleged," or the jury may find the defendant guilty as to part and not guilty as to the balance of the charge, as laid in the plaintiff's complaint; if so they shall state it specially in their verdict.

SEC. 156. When the jury find a verdict of "not guilty" generally for the defendant, the verdict shall be so recorded, and the justice shall enter judgment against the plaintiff for costs, and issue execution therefor against his goods and chattels.

SEC. 157. In all cases of forcible entry and detainer, the justice shall have power to grant a new trial, if the same be applied for on the day the verdict is rendered, and good cause be shown on affidavit therefor, which shall be within ten days after granting the same; but not more than one new trial shall be granted to either party.

SEC. 158. The estate or merits of the title shall in no wise be inquired into, on any complaint for a forcible entry and detainer.

SEC. 159. Three years quiet possession of the premises, immediately preceding the filing of the complaint, by the party complained of, or those under whom he holds, may be pleaded by any defendant, in bar of the plaintiff's demand of possession, unless his estate therein be ended.

SEC. 160. The person, entitled to any premises, may recover possession thereof in the manner hereinbefore provided in the following cases:—

1. When any person shall hold over any lands, or tenements, after the time for which they are demised, or let to him, or to the person under whom he holds, or contrary to the conditions, or covenants of any lease or agreement under which he holds;

2. When any rent shall have become due, or any such lease or agreement, and the tenant or person in possession shall have neglected or refused for ten days after demand of the possession, made in writing, to deliver up possession of the premises, or pay the rent so due;

3. When any person shall continue in possession of any premises, sold by virtue of any mortgage or execution, after the expiration of the time, limited by law, for the redemption of such premises;

4. When any tenant at will or by sufferance shall hold over after the determination of his estate by a notice to quit, as provided by law.

SEC. 161. When the plaintiff shall file a complaint for an unlawful detainer, for any one of the causes mentioned in the last section, it shall not be necessary for the justice to issue a venire for a jury, at the time of issuing the summons, but the justice shall, at the time of trial, proceed to hear and determine the complaint, unless either party shall call for a trial by jury, in which case the justice shall issue a venire in the same manner, and the same proceedings shall thereupon be had as in cases of forcible entry and detainer.

SEC. 162. When the action shall be brought to recover the possession of premises demised, or let, for the reason that the tenant, or person in possession, has refused or neglected to pay the rent due; it shall be lawful for the defendant. at any time before judgment, to pay to the justice for the plaintiff, the rent then in arrear, with interest, and the costs of the action, and thereupon no writ of restitution shall be awarded.

SEC. 163. The justice shall have the same power to adjourn in actions for forcible entry and detainer as in other cases.

SEC. 164. Neither the judgment, nor anything contained in this chapter, shall bar or prevent the party injured, from bringing an action to recover the possession of the premises, or to recover damages, for the trespass or injury committed, against the aggressor or party offending.

Action to recover possession of a mining claim.

SEC. 165. Any person, claiming the right to the occupancy and possession of a mining claim, withheld by another, may make complaint in writing, and on oath, to a justice of the peace of the county, in which the mining claim is situated, setting forth the facts constituting his right to such possession and occupancy, and such a description of the mining claim as can conveniently be given, and that the defendant wrongfully withholds the possession from him.

SEC. 166. Upon filing such complaint, the same proceedings shall be had, before the justice as in actions for a forcible entry and detainer, and if judgment be rendered for the plaintiff, a writ of restitution may in like manner be issued to place the plaintiff in possession of such mining claim.

SEC. 167. In an action to recover possession of a mining claim, proof shall be admitted of the customs, usages or regulations, established and in force at the bar, or diggings embracing such claim; and such customs, usages, or regulations, when not in conflict with the laws of the United States, or of this territory, shall govern the decision of the action.

Of proceedings for contempts before justices of the peace.

SEC. 168. In the following cases, and no others, a justice of the peace may punish for contempt :—

1. Persons guilty of disorderly, contemptuous, and insolent behaviour towards such justice, while engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings, which tends to interrupt such proceedings, or impair the respect due to his authority ;

2. Persons guilty of any breach of the peace, noise, or disturbance, tending to interrupt the official proceedings of such justice ;

3. Persons guilty of resistance, or disobedience to any lawful order, or process, made or issued by him.

SEC. 169. Punishment for contempt may be by fine, not exceeding twenty-five dollars, or by imprisonment in the county jail, not exceeding two days, at the discretion of the justice, unless otherwise provided by statute.

SEC. 170. No person shall be punished for a contempt before a justice of the peace, until an opportunity shall have been given to him to be heard in his defence; and for that purpose, the justice may issue his warrant to bring the offender before him.

SEC. 171. If the offender be present, he may be summarily arraigned by the justice, and proceeded against in the same manner, as if a warrant had been previously issued, and the offender arrested thereon.

SEC. 172. The warrant for contempt may be in the following form :—

Territory of Oregon, } ss.
County of }

To the sheriff or any constable of said county.

In the name of the United States, you are hereby commanded to apprehend A B., and bring him before J P., one of the justices of the peace of said county, at his office in said county, to show cause why he should not be convicted of a contempt, alleged to have been committed on the day of A.D. 18 , before the said justice, while engaged as a justice of the peace in judicial proceedings.

Dated this day of A.D. 18 .
J. P.,
Justice of the peace.

SEC. 173. Upon the conviction of any person for contempt, an entry thereof shall be made in the docket of such justice, stating the particular circumstances of the offence, and the judgment rendered thereon, and may be in the following form :—

Territory of Oregon, } ss.
County of }

Whereas on the day of , A.D. 18 , while the undersigned, one of the justices of the peace, of the said county, was engaged in the trial of an action, between C.D., plaintiff, and E.F., defendant, in said county, A B., of the said county, did interrupt the said proceedings, and impair the respect due to the authority of the undersigned, by (here describe the cause particularly); and whereas the said A.B. was thereupon required by the undersigned to answer for the said contempt, and show cause why he should not be convicted thereof; and whereas the said A.B. did not show cause against the said charge. Be it therefore remembered, that the said A.B. is adjudged to be guilty, and is convicted of the contempt aforesaid, and is adjudged by the undersigned, to pay a fine of dollars (or be imprisoned &c.)

Dated this day of A.D. 18 .
J.P.,
Justice of the peace.

SEC. 174. If any person convicted of a contempt be adjudged to be imprisoned, a warrant of commitment shall be issued by the justice; if he be adjudged to pay a fine, process may be issued to collect the same, and when so collected, it shall forthwith be paid by the justice in the county treasury.

Certiorari, and proceedings thereon.

SEC. 175. If any person shall conceive himself injured by error in any process, proceeding, judgment, or order given by any justice of the peace within this territory, it shall be lawful for such person to remove such process, proceeding, judgment, or order, to the district court as hereinafter provided.

SEC. 176. Within twenty days after the rendition of the judgment, or if the error be committed after judgment, then within twenty days after such error was committed, the party applying for such certiorari, his agent, or attorney, shall file in the office of the clerk of the district court, for the proper county, an affidavit stating that in his belief there is reasonable cause for granting such certiorari, for error in such judgment or proceeding (setting forth the ground of error alleged) and that the application is made in good faith, and not for the purpose of delay; and further shall execute a written undertaking to the adverse party, with one or more sureties, to be approved by the clerk, in a sum not exceeding one hundred dollars, to the effect that he will pay all costs, that may be adjudged against him in the district court.

SEC. 177. Upon filing the affidavit and executing the undertaking, mentioned in the last section, the clerk shall issue a writ of certiorari, directed to the justice committing the alleged error, commanding him to make return as to all the facts contained in such affidavit, and of all the proceedings in the case.

SEC. 178. The writ of certiorari shall not stay the execution of the judgment before the justice, unless the party applying therefor, his agent, or attorney, shall, in lieu of the undertaking mentioned in section one hundred and forty-three, execute a written undertaking to the adverse party, with one or more sufficient sureties to be approved by the clerk, in double the amount of the judgment and costs, rendered before the justice, to the effect that the party applying will prosecute the writ of certiorari to final judgment, and abide the order, the court may make therein.

SEC. 179. The writ of certiorari shall be served on the justice within ten days after it has been issued, and if an undertaking be executed in pursuance of the last section and a certificate of the clerk to that effect, be served on the justice, and further proceedings in law in such case shall cease, and if the execution shall have issued on such judgment, the justice shall immediately recall the same.

SEC. 180. Upon the service of a writ of certiorari to reverse a judgment, it shall be the duty of the party, serving the same, to deliver at the same time to the justice a copy of the affidavit on which the certiorari was procured, and the justice shall make a special return as to all the facts contained in such affidavit and of the proceedings in the case, and annex a copy thereof to the writ, and shall file the same with the clerk of the district court, within ten days after the service of the writ, together with all the papers in the action; and he shall also certify the time when the writ was served upon him.

SEC. 181. The district court shall have power to compel such justice to make or amend such return by rule, attachment, or mandamus, as the case may require.

SEC. 182. When the writ of certiorari and return shall be filed with the clerk, the case may be brought on to argument before the district court, or judge thereof at any time, thereafter according to the statutes relating thereto.

SEC. 183. The district court or judge shall after hearing the case give judgment as the right of the matter may appear, without regarding technical omissions, imperfections, or defects, in the proceedings before the justice, which did not affect the merits, and may affirm, or reverse the judgment in whole, or in part and issue execution as upon other judgments rendered before said court.

Sec. 184. If a judgment rendered before a justice be collected, and afterwards be reversed by the court above, such court shall award restitution of the amount so collected, with interest from the time of collection, and execution may issue thereon.

Of Appeals to the District Court.

Sec. 185. Any person considering himself aggrieved, by any judgment or decision of a justice of the peace, except judgment by confession' may in person or by his agent, appeal therefrom to the district court of the same county, where the judgment was rendered or the decision made.

Sec. 186. Such appeal shall be taken within twenty days, after the judgment is rendered, or the decision made, and shall be by filing a notice of appeal with the justice, and serving a copy thereof on the adverse party, or his attorney.

Sec. 187. No appeal shall be allowed in any case unless a written undertaking shall be executed on part of the appellant, by one or more sureties, in the sum of one hundred dollars, to the effect that the appellant will pay all costs which may be awarded against him on the appeal; or if a stay of proceedings before the justice be claimed, an undertaking with two or more sureties, in a sum equal to twice the amount of the judgment, to the effect that the appellant will pav the costs and judgment, provided the judgment appealed from be affirmed, or if affirmed only in part, then to the extent in which it may be affirmed.

Sec. 188. If the judgment appealed from direct the delivery of the possession of premises, in an action of forcible entry and detainer, or of a mining claim, a writ of restitution may be issued and executed, unless a written undertaking be entered into, or part of the appellant, with two or more surettes, to the effect that during the possession of such premises, or mining claim by the appellant, he will not commit, nor suffer to be committed, any waste destruction or injury thereon, and that if the judgment be affirmed, he will pay the value of the use and occupation of the premises, or mining claim, from the time of the appeal until the delivery of possession thereof, and all costs of the appeal. The amount of such undertaking shall be fixed by the justice, before whom the action was tried.

Sec. 189. Upon an appeal being made, and an undertaking filed to stay all proceedings, the justice shall allow the same, and make an entry of such allowance in his docket; and all further proceedings on the judgment before the justice shall thereupon be suspended; and if in the mean time execution shall have been issued, the justice shall give the appellant a certificate that such appeal has been allowed.

Sec. 190. On such certificate being presented to the officer holding the execution, he shall forthwith release the property of the defendant, that may have been taken on execution, and if the body of the defendant have been taken on execution he shall be discharged from imprisonment.

SEC. 191. On or before the first day of the term of the district court next after the appeal have been taken, the appellant shall furnish the district court with a transcript of all the entries made in the justice's docket relating to the case, together with all the process and other papers, relating to the action, and filed with the justice, which shall be certified by such justice to be correct, and upon the filing of such transcript, the district court shall become possessed of the cause, and shall proceed in the same manner, as near as may be, as in actions originally commenced in that court, except as herein otherwise provided.

SEC. 192. The issue before the justice shall be tried in the district court, without other or new pleadings, unless otherwise directed by the court.

SEC. 193. Upon an appeal being made and allowed, the district court may by rule and attachment, compel the justice to make and deliver to the appellant a certified transcript of the proceedings, upon paying to such justice the fees allowed by law for making such transcript, and whenever the court is satisfied that the return of the justice is substantially erroneous or defective, it may by rule and attachment compel him to amend the same.

SEC. 194. No appeal allowed by a justice shall be dismissed on account of the undertaking being defective, if the appellant will, before the motion is determined, execute and file in the district court, such an undertaking as he should have executed by the allowance of the appeal and pay all costs that shall be incurred by reason of such defect.

SEC. 195 In all cases of appeal to the district court, if on the trial anew in such court, the judgment be against the appellant in whole, or in part, such judgment shall be rendered against him and his sureties in the undertaking for the appeal.

Qualifications of Sureties.

SEC. 196. The qualifications of sureties, on the several undertakings required by this chapter, shall be as follows:—

1. Each of them shall be a resident, and householder, or freeholder within the county;

2. Each shall be worth double the amount stated in the undertaking, over and above all his debts and liabilities, exclusive of property exempt from execution.

SEC. 197. For the purpose of justification, each of the sureties shall attend before the justice at the time mentioned in the notice, and may be examined on oath, on the part of the adverse party, touching his sufficiency, in such manner, as the justice in his discretion may think proper. The examination shall be reduced to writing and subscribed by the sureties, if required.

SEC. 198. If the justice find the sureties sufficient, he shall annex the examination to the undertaking, endorse his allowance thereon, and file the same, and the officer shall thereupon be exonerated from all liability.

Of criminal proceedings before justices of the peace.

SEC. 199. Justices of the peace shall have power to hold courts, subject to the provisions hereinafter contained, to hear, try, and determine the charges, for offences arising within their respective counties, where such jurisdiction is conferred upon them by any law of this territory.

SEC. 200. Upon complaint made to any justice of the peace by any person, that any such offence has been committed within the county, he shall examine the complainant on oath, and the witnesses produced by him, and shall reduce the complaint to writing, and cause the same to be subscribed by the complainant, and if it shall appear that such offence has been committed, such justice shall issue his warrant, reciting the substance of the complaint, and requiring the sheriff, or constable, to whom it is directed, forthwith to arrest the accused, and to bring him before such justice, or some other justice of the same county, to be dealt with according to law; and in the same warrant may require the officer to summon such witnesses as shall be named therein to appear and give evidence at the trial.

SEC. 201. Every justice of the peace shall keep a separate docket for criminal cases, in which he shall enter the Territory of Oregon as plaintiff, and the accused as defendant, and he shall make all such other entries as are required in civil cases.

SEC. 202. On the return of warrant with the accused, the said justice shall proceed to hear, try, and determine the cause within one day, unless continued for cause.

SEC. 203. From the time of the return of the warrant until the time of the trial, the accused may give bail, with one or more sureties, to be approved by the justice, for his appearence, at the time fixed for the trial; or in the event of failure so to do, may be committed to jail for safe keeping, by order of said justice, or left in the custody of the arresting officer.

SEC. 204. The charge made against the accused as stated in the complaint, shall be distinctly read to him, and he shall be required to plead thereto, which plea the justice shall enter in his docket; if the accused refuse to plead, the justice shall enter the fact, with the plea of not guilty, in behalf of such accused.

SEC. 205. If the plea of the accused be not guilty, and a trial by jury be expressly waived by him, the justice shall proceed to try such issue, and to determine the same, according to the evidence which may be produced against, and in behalf of such accused.

SEC. 206. If the accused shall plead guilty to such charge, the justice shall thereupon convict him of the offence charged, and render judgment thereon.

SEC. 207. After the joining of issue, and before the justice shall proceed to an investigation of the merits of the cause, unless the accused shall expressly waive his right to a trial by jury, such justice shall make a list in writing of the names of eighteen inhabitants of the county, qualified to serve as jurors in the courts of record in this territory, from which list the complainant, and accused may strike alternately one name, until each shall have stricken out six names.

SEC. 208. In case the complainant or accused shall neglect to strike out such names, the justice shall direct some suitable disinterested person to do so, for either or both of the parties so neglecting; and upon such names being struck out the justice shall issue a venire directed to the sheriff, or any constable of the county, commanding him to summon the six persons, whose names shall remain upon such list, to appear before such justice, at the time and place to be named therein, to make a jury for the trial of such offence.

SEC. 209. The officer, to whom such venire shall be delivered, shall summon such jury personally and shall make a list of the persons summoned, which he shall certify and annex to the venire, and return the same with the venire, to the justice, within the time specified.

SEC. 210. If any of the jurors named in such venire shall fail to attend in pursuance thereof, or if there shall be any legal objection to any that shall appear, the justice shall supply the deficiency by directing the sheriff, or any constable who may be present, and disinterested, to summon any of the bystanders, or others who may be competent, and against whom no cause of challenge shall appear, to act as jurors in the cause.

SEC. 211. If the officer, to whom the venire shall have been delivered, shall fail to return the same, as thereby required, or if the jury shall fail to agree, and shall be discharged by the justice, a new jury shall be selected and summoned, in the same manner, and the same proceedings shall be had, as herein prescribed, in respect to the first jury, unless the accused shall consent to be tried by the justice, in which case, he shall proceed to the trial of the issue, as if a jury trial had been waived.

SEC. 212. In all trials for criminal offences before a justice of the peace, either party may challenge any juror for cause as in civil cases.

SEC. 213. The justice shall administer the following oath or affirmation to the jurors:—

You, and each of you, do solemnly swear, (or affirm) that you will well and truly try this cause, between the Territory of Oregon and , the accused, and a true verdict give according to law, and the evidence, unless discharged by the court—So help you God.

SEC. 214 After the jury shall have been sworn, they shall sit together, and hear the proofs, and allegations in the case, which shall be delivered in public, and in the presence of the accused; and after such proof and allegations, the jury shall be kept together in some convenient place until they agree on their verdict, or are discharged by the justice, and the sheriff, or a constable shall be sworn to take charge of the jury, in like manner, as upon trials in justices' courts in civil proceedings.

SEC. 215. When the jurors have agreed upon their verdict, they shall deliver the same to the justice publicly, who shall enter it in his docket.

SEC. 216. When the accused shall be tried under the provisions of this chapter, and found guilty, either by the justice, or jury, or shall be convicted of the charge made against him on a plea of guilty, the justice shall render judgment thereon, and inflict such punishment, either by fine or imprisonment, or both, as the nature of the case may require;

but such punishment shall in no case exceed the limit fixed by law, for the offence charged.

SEC. 217. Whenever the accused, tried under the preceding provisions of this chapter, either by the justice, or by a jury, shall be acquitted, he shall be immediately discharged, and if the justice, before whom the trial is had, shall certify in his docket that the complaint was wilful and malicious, and without probable cause, he shall enter a judgment against the complainant to pay all the costs, which shall have accrued upon the trial, and unless he enter into an undertaking to this territory, with one or more sureties, to pay such costs in thirty days after the trial, execution shall issue therefor.

SEC. 218. Whenever the accused, tried under the preceding provisions of this chapter, either by the court or the jury, shall be convicted, he may appeal from the judgment of the justice to the district court of the county—*Provided*, the person so convicted shall, within ten days after the judgment, enter into an undertaking, with one or more sufficient sureties, conditioned to appear before said court, and abide the judgment of the court therein; and the justice, from whose judgment an appeal is taken, shall make a return of the proceedings had before him, and shall cause the warrant and return, together with any undertakings, to be filed with the clerk of the district court, on or before the first day of the term of the district court, next after the appeal is taken; and the complainant, and witnesses, may also be required to enter into undertakings with or without sureties, in the discretion of the justice, to appear at said district court, at the time last aforesaid, and abide the order of the court therein.

SEC. 219. If the accused be convicted, and sentenced to be imprisoned, the judgment shall be executed by virtue of a warrant of commitment, under the hand of the justice, specifying the particulars of such judgment, and directed to the sheriff, or any constable of the county, in which the conviction shall be had. If such accused be convicted and adjudged to pay a fine and costs, the justice shall issue an execution to collect the same, which shall be returnable as executions in civil cases.

SEC. 220. In case any person, summoned to appear before any court held by a justice of the peace, pursuant to the provisions of this chapter, as a juror or witness, shall fail to appear, or if any witness appearing shall refuse to testify, he shall be liable to the same penalties, and may be proceeded against in the same manner, as provided by law in respect to jurors and witnesses in justices' courts in civil proceedings.

SEC. 221. Whenever any conviction shall be had before a court, held by a justice of the peace, the justice, by whom such court shall have been held, shall make a certificate of such conviction under his hand, in which it shall be sufficient, briefly to state the offence charged, and the conviction and judgment thereon, and if any fine has been collected, the amount thereof.

SEC. 222. Within twenty days after such conviction, the said justice shall cause such certificate to be filed in the office of the clerk of the district court of the county in which the conviction shall have been had.

SEC. 223. Every certificate of conviction made and filed under the foregoing provisions, or a duly certified copy thereof, shall be evidence in all courts and places of the facts therein contained.

Miscellaneous provisions in criminal cases.

Sec. 224. No assault, battery, or affray, shall be indictable, but all such offences shall be prosecuted and determined in a summary manner by complaint before a justice of the peace, and on conviction thereof, the offender may be punished by fine not less than five nor more than one hundred dollars, according to the nature of the offence.

Sec. 225. The last section shall not extend to the trial of any case of riot, or unlawful assembly, nor to any assault with intent to murder, kill, maim, rob, or commit a rape, but such offences shall be punishable by indictment in the district court.

Sec. 226. If, in the progress of any trial before a justice of the peace, under the provisions of this chapter, it shall appear that the accused ought to be put upon his trial for an offence, not cognizable before a justice of the peace, such justice shall immediately stop all further proceedings before him, and proceed as in other criminal cases exclusively cognizable before the district court.

Sec. 227. Justices of the peace shall have power to cause all laws, made for the preservation of the public peace to be kept, and in the execution of that power, may cause persons to be apprehended, and require them to give security to keep the peace, in the manner, provided by law. And any justice may summon to his assistance all persons present, whose duty it shall be to aid him in preserving the peace, and in arresting and securing the offenders, and any person, who shall when summoned to aid in arresting and securing an offender, refuse to give his assistance shall pay a fine, not more than twenty, nor less than five dollars, for the use of the county.

Sec. 228. In case of the breach of any recognizance, or undertaking, entered into in a criminal case before a justice of the peace, the same shall be certified by the justice, and returned to the district court to be proceeded in according to law.

Sec. 229. All fines, imposed by virtue of the provisions of this chapter, or any part thereof, collected by any justice of the peace, sheriff, or constable, shall within thirty days after the receipt thereof, be paid over to the county treasurer, to be distributed according to law.

Sec. 230. If any officer, who shall have received any such fine or any part thereof, shall neglect to pay the same, pursuant to the foregoing provision, it shall be the duty of the prosecuting attorney immediately to commence an action therefor, and to prosecute the same diligently to effect.

Sec. 231. If any person accused shall, upon trial before a justice of the peace, be acquitted, and the complainant be not adjudged to pay costs, as provided in section two hundred and seventeen, the costs of prosecution on such case shall be paid by the county; and in all cases when the person accused shall be convicted, but the costs of prosecution cannot be collected from him, such costs shall be paid by the county.

Sec. 232. The justice may, if he deem proper, require any complainant to give security for costs, as in civil cases, and if he refuse the justice may dismiss the complaint.

FORMS IN CIVIL ACTIONS IN JUSTICES' COURTS.

The following, or equivalent forms may be used by justices of the peace in civil actions, and proceedings under this chapter; to wit:—

Form of a Summons.

Territory of Oregon, } ss.
County of }

To the sheriff, or any constable of said county.

In the name of the United States you are hereby commanded to summon C.D., if he be found in your county, to be and appear before the undersigned, a justice of the peace, in and for said county, on the day of 18 , at o'clock in the noon, at his office in , to answer to A.B. in a civil action, and have you then and there this writ.

Given under my hand this day of 18 .

J. P.,
Justice of the peace.

Form of a Warrant.

Territory of Oregon, } ss.
County of }

To the sheriff, or any constable of said county.

In the name of the United States, you are hereby commanded to take the body of C.D., if he be found within your county, and bring him forthwith before the undersigned, one of the justices of the peace, in and for said county, at his office in , to answer A.B., in a civil action; and you are hereby commanded to give due notice thereof to the said plaintiff, his agent or attorney; and have you then and there this writ.

Given under my hand this day of 18 .

J. P.,
Justice of the peace.

Form of Subpena.

Territory of Oregon, } ss.
County of }

To the sheriff, or any constable of said county.

In the name of the United States, you are hereby required to appear before the undersigned, one of the justices of the peace, in and for the said county on the day of 18 , at o'clock in the noon, at his office in , to give evidence in a certain cause, then and there to be tried between A.B., plaintiff, and C.D., defendant, on the part of the plaintiff (or defendant as the case may be).

Given under my hand, this day of 18 .

J. P.,
Justice of the peace.

Form of a venire for a jury.

Territory of Oregon, } ss.
County of }

To the sheriff, or any constable of said county.

In the name of the United States, you are hereby commanded to summon six good and faithful men, of your county, to be, and appear before the undersigned, one of the justices of the peace in, and for said county, on the day of 18 , at o'clock in the noon of said day, at his office in , to make a jury, for the trial of a civil action, between A.B., plaintiff, and C.D., defendant, and have you then and there this writ.

Given under my hand, this day of 18 .

J. P.,
Justice of the peace.

Form of an Execution.

Territory of Oregon, } ss.
County of }

To the sheriff, or any constable of said county.

Whereas judgment against C.D., for the sum of dollars, and for dollars, costs of suit, was recovered on the day of 18 , before the undersigned, one of the justices of the peace, in and for said county, at the suit of A.B.: These are therefore in the name of the United States, to command you to levy on the goods and chattels of the said C.D., (excepting such as the law exempts) and make sale thereof according to law, to the amount of the said sum, and the costs upon this writ, and the same return to me within thirty days, to be rendered to the said A.B., for his debt, interest, and costs.

Given under my hand, this day of 18 .

J.P.,
Justice of the peace.

Form of Execution against the body.

Territory of Oregon, } ss.
County of }

To the sheriff, or any constable of said county.

Whereas judgment against C D., for the sum of dollars, and for dollars, costs of suit, was recovered on the day of 18 , before the undersigned, one of the justices of the peace, in and for said county, at the suit of A.B., and an execution against his property, returned unsatisfied: These are therefore in the name of the United States to command you, to take the body of the said C.D., and him convey and deliver to the keeper of the jail of said county, who is hereby commanded to receive and keep the said C.D. in safe custody in prison, until the aforesaid sum, and all legal expenses, be paid, and satisfied, or until he be discharged therefrom by due course of law, and of this writ make due return within thirty days.

Given under my hand, this day of 18 .

J. P.,

Justice of the peace.

Form of Execution against principal and surety, after expiration of stay of Execution.

Territory of Oregon, } ss.
County of }

To the sheriff, or any constable of said county.

Whereas judgment against C.D., for the sum of dollars, and for dollars costs of suit, was recovered on the day of 18 , before the undersigned, one of the justices of the peace, at the suit of A.B.; and whereas on the day of 18 , E.F. became surety to pay the said judgment and costs in month from the date of the judgment aforesaid, agreeably to law, in the payment of which the said C.D. and E.F. have failed. These are therefore in the name, &c., (as in the common form).

Form of order in Replevin.

Territory of Oregon, } ss.
County of }

To the sheriff, or any constable of said county.

In the name of the United States, you are hereby commanded to take the personal property, mentioned and described in the within affidavit, and deliver the same to the plaintiff, upon receiving a proper undertaking, unless before such delivery the defendant enter into a sufficient undertaking for the delivery thereof to the plaintiff, if delivery be adjudged.

Given under my hand, this day of 18 .

J. P.,

Justice of the peace.

Form of a Writ of Attachment.

Territory of Oregon, } ss.
County of }

To the sheriff, or any constable of said county.

In the name of the United States, you are commanded to attach and safely keep the goods and chattels, moneys, effects, and credits of C.D. (excepting such as the law exempts) or so much thereof as shall satisfy the sum of dollars with interest, and costs of suit, in whosesoever hands or possession the same may be found in your county, and so provide that the goods and chattels so attached may be subject to further proceedings thereon, as the law requires; and of this writ make legal service, and due return.

Given under my hand, this day of 18 .

J. P.,
Justice of the peace.

Form of Summons in Forcible Entry and Detainer.

Territory of Oregon, } ss.
County of }

To the sheriff, or constable of said county.

Whereas A.B., of hath exhibited unto the undersigned, one of the justices of the peace, in and for said county, a complaint against C.D., for a forcible entry and detainer of the following premises; to wit, ; hereby commanded to summon the said C.D., if he be found in your county, to appear before the undersigned on the day of 18 , at o'clock in the noon, at his office in , then and there to make answer to and defend against the complaint aforesaid; and you are also hereby commanded to serve a copy of the said complaint, on the said C.D., and of this writ make due return, with your doings thereon.

Given under my hand, this day of 18 .

J. P.,
Justice of the peace.

Form of writ of restitution in forcible entry and detainer.

Territory of Oregon, } ss.
County of }

To the sheriff, or any constable of said county.

Whereas A.B. did make complaint in writing to the undersigned, a justice of the peace in and for said county, against C.D., of the said county that he had been guilty of a forcible entry and detainer, of a certain tract of land (or other possessions) of the said A.B., and whereas a jury was empanneled and sworn to inquire of said complaint, and did return their verdict, that the said C.D. was guilty of a forcible entry and detainer of the following described tract of land; to wit, (here describe the premises, of which the defendant is found guilty of forcibly entering and detaining); and whereas judgment was entered thereon by said justice, and that the said A.B. should have restitution of the premises; therefore, in the name of the United States, you are hereby commanded to cause the said C.D. to be forthwith removed from the premises aforesaid, and that the said A.B. have peaceable restitution of the same, and also that you levy of the goods and chattels of C.D. found in your county, the sum of dollars being the amount of costs, on the trial aforesaid, together with dollars for this writ and also your own fees, and make return of this writ within thirty days next after the date hereof.

Given under my hand, this day of 18 .

J.P.,
Justice of the peace.

Form of undertaking for an arrest.

Whereas an application has been made by A.B., plaintiff, to J.P., one of the justices of the peace in and for county, for a warrant to arrest C.D., defendant, founded upon an affidavit of the said plaintiff, setting forth that, &c. (here state the cause for the arrest): Now therefore we A.B., plaintiff, and E.F., acknowledge ourselves bound to C D. in the sum of dollars, to pay all costs that may be awarded to the said defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum of dollars.

Dated this day of 18 .

A.B.
E.F.

Form of undertaking in Replevin.

Whereas A.B., plaintiff, has commenced an action before J.P., one of the justices of the peace, in and for county against C.D., defendant, for the recovery of certain personal property, mentioned and described in the affidavit of the plaintiff; to wit, (here set forth the property claimed): Now therefore, we, A.B., plaintiff, E.F., and G.H., acknowledge ourselves bound unto C.D. in the sum of dollars, for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff.

Dated the day of 18 .

A.B.
E.F.
G.H.

Form of undertaking in attachment.

Whereas an application has been made by A.B., plaintiff, to J.P., one of the justices of the peace, in and for county, for a writ of attachment, against the personal property of C.D., defendant, (a foreign corporation, a non-resident, or because he has assigned, secreted, &c.): Now therefore we, A.B., plaintiff, and E.F., acknowledge ourselves bound to C.D. in the sum of dollars, that if the defendant recover judgment in this action, the plaintiff will pay all costs that may be awarded to the defendant, and all damages, which he may sustain by reason of the said attachment, not exceeding the sum of dollars.

Dated the day of 18 .

A.B.
E.F.

Form of undertaking to discharge attachment.

Whereas a writ of attachment has been issued by J.P., one of the justices of the peace, in and for county, against the personal property of C.D., defendant, in an action in which A.B. is plaintiff: Now therefore, we, C.D., defendant, E.F. and G.H. acknowledge ourselves bound unto J.K., constable, in the sum of dollars (double the value of the property) engaging to redeliver the property attached; to wit, (here set forth a list of articles attached) or pay the value thereof to the sheriff or constable, to whom execution upon a judgment obtained by the plaintiff, in the aforesaid action, may be issued.

Dated this day of 18 .

C.D.
E.F.
G.H.

Form of undertaking to indemnify constable, on claim of property by a third person.

Whereas L.M. claims to be the owner of, and have the right to the possession of certain personal property; to wit, (here describe it) which has been taken by J K., constable, in county, upon an execution issued by J.P., justice of the peace, in and for the county of upon a judgment obtained by A.B., plaintiff, against C.D., defendant: Now therefore, we, A.B., plaintiff, E.F. and G.H., acknowledge ourselves bound unto the said J.K., constable, in the sum of dollars, to indemnify the said J.K. against such claim.

A.B.
E.F.
G.H.

FORMS OF PROCEEDINGS IN CRIMINAL CASES.

The following or equivalent forms may be used by justices of the peace, in criminal proceedings under this chapter :—

Form of a warrant.

Territory of Oregon, }
County of } ss.

To the sheriff, or any constable of said county.

Whereas A.B. has this day complained in writing, under oath, to the undersigned, one of the justices of the peace in and for said county, that on the day of 18 , at in said county (here insert the substance of the complaint, whatever it may be): Therefore, in the name of the United States, you are commanded forthwith to apprehend the said C.D., and bring him before me to be dealt with according to law.

Given under my hand, this day of 18 .

J.P.,
Justice of the peace.

Form of an Execution.

Territory of Oregon, }
County of } ss.

To the sheriff, or any constable of said county,

Whereas at a justice's court held at my office in said county for the trial of C.D., for the offence hereinafter stated, the said C.D. was convicted of having on the day of 18 , in said county committed (here state the offence) and upon conviction the said court did adjudge and determine that the said C.D should pay a fine of dollars, and dollars costs: and whereas the said fine and costs have not been paid: These are therefore in the name of the United States to command you to levy on the goods and chattels, &c, (as in executions in civil cases.)

Form of certificate of conviction.

Territory of Oregon, }
County of } ss.

At a justice's court held at my office in said county, before me, one of the justices of the peace, in and for said county, for the trial of C.D., for the offence hereinafter stated, the said C.D. was convicted of having, on the day of 18 , at , in said county of (here insert the offence) and upon conviction the said court did adjudge and determine that the said C.D. should pay a fine of dollars (or be imprisoned as the case may be) and the said fine has been paid to me.

Given under my hand, this day of 18 .

J. P.,
Justice of the peace.

Form of commitment upon sentence.

Territory of Oregon, } ss.
County of

To any constable, and the keeper of the common jail of said county.

Whereas at a justice's court, held at my office in said county, for the trial of C.D., for the offence hereinafter stated, the said C.D. was convicted of having on the day of 18 , in said county committed (here state the offence) and upon conviction the said court did adjudge and determine that the said C.D. should be imprisoned in the common county jail of said county, for days: Therefore, you the said constable are commanded, in the name of the United States, forthwith to convey and deliver the said C.D. to the said keeper; and you the said keeper are hereby commanded to receive the said C.D. into your custody in the said jail, and him there safely keep until the expiration of said days, or until he shall thence be discharged, by due course of law.

Given under my hand, this day of 18 .
J.P.,
Justice of the peace.

Form of warrant to keep the peace.

Territory of Oregon, } ss.
County of

To the sheriff, or any constable of said county.

Whereas A.B. has this day complained in writing, and under oath to the undersigned, one of the justices of the peace, in and for said county, that he has just cause to fear, and does fear that C.D. late of said county will (here state the threatened injury, or violence as sworn to): Therefore, in the name of the United States, you are commanded to apprehend the said C.D., and bring him forthwith before me, to show cause why he should not give surety to keep the peace, and be of good behavior towards all the people of this territory, and the said A.B. especially, and further to be dealt with according to law.

Given under my hand, this day of 18 .
J.P.,
Justice of the peace.

Form of commitment to answer in the District Court.

Territory of Oregon, } ss.
County of

To any constable, and to the keeper of the common jail of said county.

Whereas on the day of 18 , A B. made complaint in writing, and on oath, before the undersigned, one of the justices of the peace, in and for said county, charging C.D. with having on the day of 18 , committed the crime of larceny (or other crime as the case may be), and the said C.D. having been brought before and examined by me, and it being sufficiently proved to me, that the said C.D. has, in said county, committed the crime of larceny (or other crime) by stealing one bay horse, of the value of dollars, of the goods and chattels of the said A.B.; and he the said C.D. having failed to give bail for his appearance to answer at the next term of the district court in the sum of dollars, as required by me: Therefore, in the name of the United States, you, the said constable are commanded forthwith to convey and deliver the said C.D. to the said keeper; and you the said keeper are hereby commanded to receive the said C.D. into your custody, in the said jail, and him there safely keep, until he be discharged by due course of law.

Given under my hand, this day of 18 .

J.P.,
Justice of the peace.

Form of commitment when justice on the trial shall find that he has not jurisdiction of the case.

Territory of Oregon, } ss.
County of }

To any constable, and to the keeper of the common jail of said county.

Whereas C.D. of &c., has been brought this day before the undersigned, one of the justices of the peace, in and for said county, charged on the oath of A.B., with having on the day of 18 , in said county, committed the offence of (here state the offence charged in the warrant) and in the progress of the trial of said charge, it appearing to the said justice, that the said C.D. has been guilty of the offence of (here state the new offence found on the trial, committed at the time and place aforesaid, of which offence the justice has not final jurisdiction); and whereas the said C.D. has failed to give bail in the sum of dollars for his appearance to answer at the next term of the district court, as required by me: Therefore, in the name of the United States, &c., (as in the last form).

Form of search warrant.

Territory of Oregon, } ss.
County of }

To the sheriff, or any constable of said county.

Whereas A.B. has this day made complaint on oath, to the undersigned, one of the justices of the peace in and for said county, that the following goods and chattels; to wit, (here describe them) the property of the said A.B. have, within days past, (or were on the day of) by some person, or persons unknown, been stolen, taken and carried away out of the possession of said A.B. in the county aforesaid; and also that the said A.B. verily believes that the said goods or a part thereof are concealed in or about the house of C.D. in said county (describing the premises to be searched): Therefore in the name of the United States, you are commanded that with the necessary and proper assistance, you enter into the said house (describe the premises to be searched) and then diligently search for the said goods, and chattels, and if the same or any part thereof be found on such search, bring the same, as also the said C.D. forthwith before me to be disposed of according to law.

Given under my hand, this day of 18 .

J.P.,
Justice of the peace.

Form of recognizance to appear at district court.

Be it remembered that on the day of 18 , before me a justice of the peace in and for said county, personally came C.D. and E.F., and acknowledge themselves each to owe the territory of Oregon dollars. The condition of this recognizance is such that if the said C.D. shall personally appear at the district court of said county, on the first day of the next term thereof, then and there to answer a charge of, (here name the offence with which the party is charged) and abide the judgment of said court, and not depart without leave of the same; then this recognizance shall be void: otherwise in full force.

C.D.
E.F.

Taken and acknowledged before me, this day of 18 .

J. P.,
Justice of the peace.

OF SHERIFFS.

Sec. 1. There shall be elected at the annual election, by the qualified voters of each county, in this territory, a sheriff, who shall hold his office for two years, and until his successor is elected and qualified.

Sec. 2. The sheriff of each county shall be the collector of taxes in his county, and perform all the duties, required by law to be performed by sheriff and tax collector respectively.

Sec. 3. Every person elected or appointed to the office of sheriff, shall before entering on the duties of his office, enter into a bond to his county, in the penal sum of ten thousand dollars, with two or more sureties, residing in his county, to be approved by the board of county commissioners, and the approval endorsed thereon, conditioned that the sheriff shall well and faithfully, in all things, perform the duties of sheriff and collector of taxes according to law, during his continuance in office, without fraud, deceit or oppression, which bond shall be filed in the office of county auditor. He shall also take and subscribe an oath, faithfully and diligently to perform the duties of sheriff and tax collector, during his continuance in office, and said oath shall be certified on the back of his certificate of election, and filed and recorded in the office of the county auditor.

Sec. 4. All persons, elected sheriff in this territory, shall be qualified as prescribed by law, at the regular session of the board of county commissioners, next succeeding the day of the election.

Sec. 5. The sheriff shall have power, under his hand and seal, to appoint one or more deputies, who are hereby empowered to perform all the duties devolving on the sheriff of the county; and the sheriff shall be responsible for all the acts of his deputy, and may remove such deputy at pleasure; but no deputy sheriff shall enter upon the duties of his office, until he has taken an oath, to perform the duties of his office faithfully and impartially, and to the best of his ability; which oath shall be subscribed and certified on the back of his appointment, and filed and recorded in the office of the county auditor.

Sec. 6. Every sheriff shall have the custody of the jails and prisons of his county, and the prisoners in the same, and shall appoint keepers thereof, for whose conduct he shall be responsible, and whom he may remove at pleasure; and no sheriff, or deputy sheriff, can hold any other civil office, except deputy marshal, nor be allowed to practice law in any court, of which he is an officer.

Sec. 7. It shall be the duty of sheriffs, to keep and preserve the peace in their respective counties, for which purpose they are empowered to call to their aid such persons or power of their respective counties as they may deem necessary: they shall also pursue and apprehend all felons, and persons charged with any crime or misdemeanor, and for that purpose may execute any warrant to them directed, in any part of this territory: they shall execute all writs and other process from the justice of the peace, district court, probate court, or other tribunal, or person, to them directed by legal authority; they shall attend at the sessions of the district court, and they shall serve or post up all notices they may receive from the board of county commissioners, or from the county auditor: they shall give notice of a special election when notified by the county auditor, and shall notifiy the county commissioners, when any vacancy happens in the office of county auditor; shall collect the county revenue, and pay over to the county treasurer the sums so collected and take his receipt therefor, which receipt shall be a sufficient voucher on his settlement for the taxes collected by him, and shall keep his office at the county seat, and shall generally perform all the duties, which are, or may hereafter be authorized by law, to be performed by the sheriff or tax collector.

SEC. 8. In case the office of sheriff shall become vacant, the board of county commissioners shall forthwith appoint some suitable person (having the qualifications of a voter in their county) to be sheriff of the county during the unexpired term, or till the next general election.

SEC. 9. Every sheriff, to whom any writ shall be delivered in the county where it is to be executed, shall, if required by the person delivering the same, give to such person a certificate, under his hand without charge, wherein the names of the parties, and the day of delivering the writ, shall be mentioned.

SEC. 10. If any sheriff shall fail to pay over to the county treasurer, according to law, any money which he may have collected, or received belonging to such county, or shall neglect, or refuse to pay over any money, he may have collected by virtue of any execution or process, or shall neglect his duties, to the injury of the county, or any persons, it may be lawful for the board of county commissioners; or such person or persons, entitled to receive the same, who may have been injured as aforesaid, to proceed against such sheriff, in a summary way, before the district court by motion, by giving such sheriff three days notice of such application, and recover the amount due, or damage done, with twenty per cent. damages thereon for such neglect, and shall have execution therefor with costs, and may proceed against such sheriff and his sureties, for such delinquency upon his bond of office: *provided*, that in all such cases, if the sheriff shall satisfy or pay the amount claimed by the party prosecuting, with costs, under the direction of the court before final judgment, all further proceedings on such bond, shall be stayed, by the court.

SEC. 11. It shall be the duty of every sheriff in this territory to to make a settlement with the board of commissioners of his county for the taxes, and moneys collected by him, or due the county, at the April term of such board annually, and as often thereafter, as he shall be required by said board, and before exhibiting his accounts to the said board for settlement, he shall have the same examined and audited by the county auditor, but the decision of the county auditor shall not be final.

Sec. 12. No sheriff or other officer, by color of their office shall directly or indirectly ask, demand, or receive for any services, or acts by them performed in pursuance of any duty of their office, any greater or more fees, than they are allowed by law, on pain of forfeiting for such offence, to the party aggrieved, treble the sum so demanded or received, together with costs of suit.

Sec. 13. No sheriff shall become the purchaser, nor procure any person to become the purchaser for him of any property, real or personal, by him exposed to sale by virtue of any execution or other process; and all such purchases made by any sheriff; or and other person in his behalf, shall be absolutely null and void.

Sec. 14. Every sheriff going out of office, at the expiration of his term, and having any writ of fieri facias, or fee bill which he may have levied, but not collected, or any tax list uncollected, shall be and hereby is authorized to proceed and collect such execution, fee bill, or tax list, in the same manner as if his office had not expired.

Sec. 15. Sheriffs and jailors shall receive from any constable, or other officer, without charge, and safely keep in prison all felons indicted or taken in the fact, who shall be taken by any constable, or other officer; and not of their own authority let out of prison any person in their custody by virtue of any process, for any felony, or upon any condemnation, or committal by order of any court, or justice of the peace, upon pain of being punished by fine and imprisonment; *provided*, that if there be no jail for the confinement of prisoners in the county, or the jail shall be insufficient, it shall be the duty of the sheriff to employ such means, as may be necessary, for the safe keeping of all prisoners, committed to his custody.

Sec. 16. Every sheriff shall receive the following fees, for collecting taxes, seven per cent. on all moneys collected by him, to be returned by him on making payment, and he shall be credited therefor, on his settlement with the county auditor, and board of county commissioners; and shall also be allowed five per cent. commission where goods are distressed, and taxes, commission, and charges paid before sale; and seven per cent. on sales of distress, and charges for keeping the property distressed.

Sec. 17. Any sheriff or other officer, who shall have legally arrested any person in any county in this territory, may pass through any other counties, that may be in the ordinary travel, in conveying such prisoner to the place where he is to be conveyed, according to the command of the process, by virtue of which the arrest was made.

Sec. 18. No sheriff, deputy sheriff, or coroner, shall appear, or practice as an attorney, solicitor, or counselor, in any court, nor shall they draw, or fill up any writ pleading or proceeding for any party in any suit; nor shall they, with intent to be employed in the collection of any demand, or the service of any proces, advise or counsel any person to commence any suit or proceeding; and either of the said officers, for a violation of any of the provisions of this section, shall forfeit a sum not exceeding one hundred dollars.

Sec. 19. Whenever any sheriff shall neglect to make due return of any process; delivered to him to be executed, or shall be guilty of any misconduct in relation thereto, he shall be liable to fine, or attachment, or both, at the discretion of the court: such fine however shall not exceed five hundred dollars, and shall also be liable to an action for damages to the party aggrieved.

SEC. 20. Whenever the coroner shall execute the office of sheriff, he shall perform all the duties, and be liable to all the liabilities imposed by law upon a sheriff duly elected, and qualified.

SEC. 21. Nothing contained in this act shall be so construed, as to prevent any person, now holding the office of sheriff in this territory, from holding the same, during the term for which he was elected.

OF CORONERS.

Sec. 1. A coroner shall be elected, in each organized county in this territory, for the term of two years; who shall, before he enters upon the duties of his office, give a bond to the county in such sum, not less than five hundred, nor more than ten thousand dollars, with two or more sureties, to be approved by the board of county commissioners. The condition of such bond shall be in substance, the same as required to be given by the sheriff, except in the description of the office; and such bond shall be filed in the office of the county auditor.

Sec. 2. When there shall be no sheriff, or under sheriff in any county, it shall be the duty of the coroner, in each county, to exercise all the powers, and duties of sheriff of his county; until a sheriff shall be appointed and qualified; and when the sheriff for any cause shall be committed to the jail of his county, such coroner shall be keeper thereof, during the time the sheriff shall remain a prisoner therein.

Sec. 3. Every coroner shall serve and execute process of every kind and perform all the duties of the sheriff, when the sheriff shall be a party in the case or whenever affidavit shall be made and filed as provided in the succeeding section; and in all such cases he shall exercise the same powers, and proceed in the same manner as prescribed for the sheriff in the performance of similar duties, and in such cases, the coroner of any county, attached to another for judicial purposes, may, in like manner, serve and execute such process and perform such duties within his own county; and in all such cases, coroners and their sureties shall be liable in the same manner, and to the same extent, as sheriffs are made liable in similar cases.

Sec. 4. Whenever any party, his agent, or attorney, shall make and file with the clerk of the district court, on affidavit, stating that he believes the sheriff of such county will not, by reason, either of partiality, prejudice, consanguinity, or interest, faithfully perform his duties in any suit, the clerk shall direct the original or other process in such suit to the coroner, who shall execute the same, in like manner as the sheriff might, or ought to have done.

Sec. 5. Coroners shall take inquest upon view of the dead body of such persons only as shall be supposed to have come to their death by violence, and not when the death is believed to have been, and was evidently occasioned by casualty.

Sec. 6. As soon as any coroner shall have notice of the dead body of any person, supposed to have come to his death by violence, found or lying within his county, he shall make his warrant to some constable of the county, requiring him forthwith to summon six good and lawful men of the county, to appear before such coroner, at the time and place expressed in such warrant; and the warrant may be issued with or without a seal, and in substance as follows:—

Territory of Oregon, } ss.
County of }
To any constable of said county.
Greeting:—

In the name of the United States, you are hereby commanded immediately to summon six good and lawful men of the county of to appear before me coroner of said county, at the dwelling house of , or at a place called in said county, at the hour of , then and there to inquire, upon the view of the body of , then laying dead, when, how, and by what means he came to his death.—Hereof fail not.

Given under my hand, the day of 18 .
Coroner.

Sec. 7. The constable to whom such warrant shall be directed, and delivered, shall forthwith execute the same, and shall, at the time mentioned in the warrant, repair to the place where the dead body is, and make return thereof to the coroner, and of his doings thereon under his hand; and any constable, who shall unnecessarily neglect, or fail to execute or return such warrant, shall forfeit the sum of ten dollars; and if any person summoned as a juror shall fail to appear without reasonable excuse therefor, he shall forfeit the sum of ten dollars, which forfeitures may be recovered in an action before a justice of the peace, to be brought by the coroner for the use of the county.

Sec. 8. When the jurors, who have been summoned, appear, the coroner shall call over their names; and then in view of the dead body shall administer to them the following oath:—

You solemnly swear or affirm (as the case may be) that you will diligently inquire, and true presentment make, on behalf of the United States of America, when, how, and by what means, the person, whose body now lies before you dead, came to his death, and you shall return a true inquest thereof, according to your knowledge, and such evidence as shall be laid before you—So help you God.

If the six jurors shall not appear, the coroner may require the constable, or any other person, whom he shall appoint, to return jurors from the bystanders to complete that number.

Sec. 9. The coroner may issue subpenas for witnesses returnable forthwith, or at such time and place as he shall direct The persons served with such subpenas, shall be allowed the same fees, and their attendance shall be enforced in the same manner by the coroner, and they shall be subject to the same penalties, as if they had been served with a subpena in behalf of the United S;ates of America, to attend a justice's court.

Sec. 10. An oath to the following effect shall be administered to the witnesses by the coroner:—

You solemnly swear that the evidence you shall give to this inquest, concerning the death of the person lying here dead, shall be the truth, the whole truth, and nothing but the truth—So help you God.

Sec. 11 The testimony of all witnesses, examined before any inquest. shall be reduced to writing by the coroner, or some other person by his direction, and subscribed by the witnesses, respectfully giving it in.

Sec. 12. The jury, upon inspection of the dead body, and after hearing the testimony, and making all needful inquiries, shall draw up and deliver to the coroner, the inquisition, under their hands, in which they shall find and certify when, how, and by what means the deceased person came to his death, and his name if known, together with all the material circumstances attending his death ; and if it shall appear that he was murdered, the jurors shall further state who were if known, or were in any manner, the cause of his death, which inquisition may be, in substance as follows:—

Territory of Oregon, } ss.
County of }

An inquisition taken at in the county of on the day of A. D. 18 , before coroner of said county, upon the view of the body of (or a person lying then dead,) by the oaths of the jurors whose names are hereunto subscribed, who, being sworn to inquire, on behalf of the United States of America, when, how, and by what means the said , (or person) came to his death, upon their oaths say, (then insert when, how, and by what person, means, weapon, or instrument, he was killed.)

In testimony whereof, the said coroner, and jurors of this inquest, have hereunto set their hands, the day and year aforesaid.

Sec. 13 If the jury find that any murder, manslaughter or assault has been committed on the deceased, the coroner shall bind over by recognizance such witnesses, as he may deem proper, to appear and testify, at the next term of the court, to be held in the same county, at which an indictment for such offence can be found ; he shall also return to the same court the inquisition, written evidence, all recognizances, and examinations by him taken, and may commit to the jail of the county any witnesses who shall fail to recognize, in such manner as he shall direct.

Sec. 14. If any person, charged by the inquest with having committed such offence, shall not be in custody, the coroner shall have the same power as a justice of the peace, to issue process for his apprehension, and such warrant shall be made returnable before any justice of the peace, or other magistrate, or court, having jurisdiction of the case, who shall proceed therein in the same manner, that is required of justices of the peace (or other magistrate, or court) in like case.

Sec. 15. When any coroner shall take an inquest upon the view of the dead body of any stranger, or, being called for that purpose, shall not think it necessary, on view of such body, that an inquest should be taken, he shall cause the body to be decently buried, and all the expenses of the inquisition, and burial, shall be paid by the county in which such dead body shall be found.

SEC. 16. In case of the absence of the coroner, any justice of the peace or judge of probate, being notified of any dead body as before mentioned, shall be authorized and they are hereby required to appoint some suitable person to hold an inquest on the same, and the person so appointed shall have the same powers that are hereby conferred on the coroner.

AN ACT RELATING TO COUNTY AUDITORS.

Sec. 1. At the first general election in each and every county (hereafter) organized for county purposes, and every two years thereafter, there shall be elected a county auditor, who shall have the qualifications of a voter and shall continue in his office for the period of two years, and until his successor is duly elected and qualified.

Sec. 2. The auditor shall also be clerk of the board of county commissioners, and recorder of deeds in the county for which he is elected.

Sec. 3. The election provided for by this act shall be conducted and the returns made, in the manner and form prescribed by the law regulating general elections; *provided*, that the person or persons associated with the auditor in opening, and examining the poll books, shall issue to the person duly elected under this act, his certificate of election.

Sec. 4. Every auditor within fifteen days after receiving his certificate of election, and before he shall enter upon the discharge of the duties of his office, shall take and subscribe an oath before the clerk of the district court, or judge of probate of his proper county, to faithfully and impartially perform the duties of his office as prescribed by law, to the best of his abilities; which oath shall be endorsed on the back of his certificate of election, recorded in a book kept for the purpose in his office, and filed in the office of the clerk of the district court of the county, or if there be no such officer, with the clerk of the district court of the county, to which his county may be attached for judicial purposes. He shall also give a bond to his county, with good and sufficient sureties, in the penal sum of one thousand dollars, to be approved by the county commissioners of his county, conditioned that he will faithfully and impartially fulfil the duties of his office; which bond shall be filed in the office of the clerk of the district court of the proper county; he shall audit all accounts and demands chargable against his county, (which are not directed to be settled and allowed by some other tribunal or person) and present the same to the county commissioners for their inspection and allowance, and for all such sums of money allowed by the county commissioners, or such other tribunal or person, or where the same is fixed by law, he shall issue his order on the treasurer of the county, payable to the person entitled thereto, which orders shall be numbered progressively; and the number, date, and amount of each, and to whom payable, and for what purpose drawn, shall at the time of issuing the same, be entered in a book kept for that purpose.

Sec. 5. He shall keep an accurate account current with the treasurer of the county, and when any person shall deposit with him any receipt given by the treasurer, for money paid into the treasury, he shall file such receipt, and charge the treasurer with the amount thereof.

SEC 6. Auditors and their deputies are authorized to administer oaths necessary in the performance of their duties; and in all other cases where oaths are required by law to be administered.

SEC. 7. No person doing the duties of auditor, shall practice as an attorney before the board of county commissioners.

SEC. 8. Any person may have a county order cancelled, by the auditor, and two or more new orders issued in lieu thereof, by paying to such auditor the fees allowed for such services.

SEC. 9. In case the auditor is unable to attend to the duties of his office, during the session of the board of county commissioners, and having no deputy able to attend, some person may be deputized by such board to perform the duties of auditor for the time being.

SEC. 10. Nothing in this act shall be so construed as to prevent the persons now discharging the duties of county auditor in any county, from continuing to perform the duties of that office during the time he would otherwise have been entitled.

SEC. 11 The county auditors in the several counties may appoint deputy auditors, who shall be appointed in writing, and shall, before entering upon the discharge of the duties of their office, take and subscribe an oath faithfully to perform the duties of their office, which oath shall be endorsed on the appointment, and recorded in the office of the county auditor. The county auditors shall be responsible for the acts of their deputies, and may revoke their appointment at pleasure.

SEC. 12. The county auditor shall attend the meeting of the board of county commissioners of their respective counties, and do and perform all the duties imposed law; and the clerk of said board, shall keep fair books, wherein shall be entered the minutes of the proceedings of the board; shall copy into books the reports of the treasurer of the receipts and disbursements of the county, and whenever the duplicate shall be put into the hands of the collector, it shall be the duty of the county auditor to send a statement of the same, wherewith such collector stands charged to the county treasurer.

AN ACT IN RELATION TO COUNTY TREASURERS.

SEC. 1. There shall be elected at the annual election in each county in this territory; by the qualified voters thereof, some suitable person, being a resident of the same county, to be the county treasurer, who shall continue in office for one year, and until his successor is elected and qualified.

SEC. 2. The county treasurer, before he enters on the duties of his office, shall take an oath faithfully to discharge the duties of his office as prescribed by law; he shall also, before he shall enter upon the duties of his office, give a bond to the county, with at least four freeholders residing in the county, as sureties, in a penalty to be determined by the board of county commissioners who shall also approve the sureties to the bond.

SEC. 3. He shall receive all moneys due, and accruing to his county and disburse the same on the proper orders, issued and attested by the county auditor.

SEC. 4. County treasurere may appoint one or more deputies, and may take from them bond and security; may remove such deputies at pleasure and such treasurer and his sureties shall be liable for all official acts of such deputies.

SEC. 5. The county treasurer shall keep his office at the seat of justice of his county, and shall keep the same open for the transaction of business during business hours; and he and his deputy are authorized to administer all oaths, necessary in the discharge of the duties of his office.

SEC. 6. He shall so arrange, and keep his books that the amount received and paid out, on account of separate and distinct funds, or specific appropriations, shall be exhibited in separate accounts, as well as the whole receipts and expenditures by one general account.

SEC. 7. He shall at all times keep his books and office subject to the inspection and examination of the board of county commissioners, and shall exhibit the money in his office to such board at least once a year.

SEC. 8. He shall pay all orders of the county auditor when presented, if there be money in the treasury for that purpose, and write on the face of such order, the date of redemption, and his signature. If there be no funds to pay such order when presented, he shall endorse thereon, "Not paid for want of funds," and the date of such presentment, over his signature, which shall entitle such order thenceforth to draw legal interest—*Provided*, that such interest shall cease from the date of notice by publication in some newspaper, printed or circulated in his county, to be given by the county treasurer, that there are funds to redeem such outstanding orders, which notice such treasurer shall give in such case.

SEC. 9. When the county treasurer shall redeem any order on which interest is due, he shall note on such order, the amount of interest by him paid thereon, and shall enter on his account the amount of such interest, distinct from the principal.

SEC. 10. County orders shall be redeemed by the treasurer according to the priority of the time of presentment—*Provided*, such orders payable out of the county revenue shall be received in payment of county taxes, without any regard to priority of presentment, or number; but such treasurer shall not pay any balance thereon over and above such tax, when there are outstanding orders unpaid for want of funds.

SEC. 11. The treasurer shall, on the first Monday in December, March, June, and September, in each year, deposit with the county auditor, all county orders redeemed, who shall receipt therefor.

SEC. 12. Whenever suit shall have been commenced on the official bond of any delinquent treasurer, he may be removed by the board of county commissioners of his county.

SEC. 13. The county treasurer shall annually make complete settlement with the board of county commissioners, at the regular July term thereof, and shall, at the expiration of his term, deliver to his successor all public money, books, and papers in his possession.

SEC. 14. The county treasurer shall receive as a compensation for his services, three per cent. for all moneys received and paid out by him for the county.

COUNTY COMMISSIONERS.

Sec. 1. There shall be established in each organized county in this territory, a board of commissioners, to consist of three persons, having the qualifications of electors, and two of whom shall be competent to do business, to be elected by the qualified electors thereof, at the annual election, who shall hold their office for three years, except as hereinafter provided.

Sec. 2. The commissioners first elected in any county in this territory, shall hold their office for the term of one, two, and three years, and until their successors are elected and qualified. to be by them determined by lot, at their first session—*Provided*, that if any commissioner shall absent himself from the county in which he is elected, for six months in succession, it shall be deemed a resignation of his office.

Sec. 3. Whenever it shall become necessary to elect a commissioner to fill any vacancy occasioned by death, resignation, or removal, the person elected shall hold his office for the unexpired term, for which his predecessor was elected and until his successor is elected and qualified.

Sec. 4. Before any commissioner shall enter upon the duties of his office, he shall take and subscribe an oath, or affirmation, before some person authorized to administer the same, faithfully to discharge the duties of a commissioner of the county, in which he resides; and deposit a certificate thereof with the clerk of the board of commissioners, of his county, to be by him filed in his office.

Sec. 5. The commissioners thus elected and qualified may sue and be sued, plead and be impleaded, defend and be defended, answer and be answered unto, in any court, either in law or in equity, and do and transact all business on behalf of their respective counties, that may be assigned to them by law; and in all cases where their respective counties have been injured, or may hereafter be injured in their goods, chattels, lands, tenements, rights, credits, and effects, or contracts, such commissioners may in their name of office, without setting out their individual names, bring any suit or suits, either in law or equity, which may be best calculated to obtain redress for such injury, and may, in like manner, and by their name of office, be sued by any person or persons, having any claims against such county.

Sec. 6. The board of commissioners shall hold four sessions, annually, at the seat of justice of their respective counties, commencing on the first Mondays of April, July, September and December; at all of which they shall transact any business which may be required by law; *provided*, that if the district court be in session on any of the above mentioned days, the commissioners shall meet on the Monday preceding, but no session shall be continued for a longer period than six days.

Sec. 7. At the July session the commissioners shall examine and compare the accounts and vouchers of the county auditor and treasurer, count the funds in the treasury, and direct the auditor to publish an exhibit of the receipts and expenditures of the past year.

Sec. 8. The said board of county commissioners are hereby authorized to hold extra sessions, in case they may think the business of their county requires the same; and ten days notice from any two of the commissioners to the third, shall be considered a sufficient call for said extra sessions—*Provided*, that no such extra session shall exceed three days.

Sec 9. The commissioners shall each receive five dollars per day, for each and every day they may be necessarily employed in transacting the county's business, and ten cents a mile for every mile traveled in going to, and returning from the meeting of said board, or in the discharge of any official duty, to be computed by the most usually traveled route.

Sec. 10. When two only of the members shall be present, at the meeting of the board, and a division shall take place on any question, it shall be postponed to a subsequent meeting.

Sec. 11. The county auditor shall be the clerk of the board of county commissioners, and shall attend the meetings of the board, and keep a record of the proceedings, and do such other business as he shall be required by law to do.

Sec. 12. The commissioners of each county shall have and use a seal for the purpose of sealing their proceedings; and copies of the same when signed and sealed by *said commissioners*, and attested by their clerk, shall be good evidence of such proceedings in the trial of any cauuse in any court of this territory.

Sec. 13. The several boards of county commissioners are authorized and required:—

1. To provide for the erection and repairing of court houses, jails, and other necessary public buildings for the use of the county;

2. To lay out, discontinue, or alter county roads and highways within their respective counties, and to do all other necessary acts relating thereto;

3. To license and fix the rates of ferriage; to grant grocery and other licenses, authorized by law to be by them granted;

4. To fix the amount of taxes to be assessed according to the provisions of law and cause the same to be levied and collected.

5. To have the care of the county property and the management of the county funds, and business; except in cases otherwise provided for, and shall have no other powers, except such as are, or may be *given* by law.

Sec. 14. The commissioners aforesaid at their annual session in July, in each and every year, shall elect one of their members to preside at the meetings of the board, and he shall sign all documents, requiring the signature of the board; and the signature of such person, as chairman of the board of commissioners, shall be as legal and binding as if the entire board had affixed their names—*Provided*, that in case such chairman shall be absent at any meeting of the board, all documents requiring the signature of the board, shall be signed by both members present.

SEC. 15. It shall be the duty of the board of county commissioners to provide offices for the sheriff, the county auditor, and clerk of the district court, and also provide all books, and stationary, necessary for the use of the clerk of the district court, the probate court, and county treasurer, and also provide convenient desks for the preservation and security of the books, and other documents in the several offices.

SEC. 16. The board of commissioners at their session in September in each year, shall receive and inspect ~~the~~ assessment roll, returned by the assessors, and if it be found correct, it shall be accepted by the board in writing, signed by the chairman and attested by the clerk, and cause the same to be filed in the office of the county auditor, where it shall remain as a matter of record, and shall be a guide for future assessors, so far as the same shall remain correct.

SEC. 17. The boards of commissioners of the several counties of this territory, are vested with the entire superintendence of the poor in their respective counties.

SEC. 18. The county commissioners of their respective counties, shall have power to compound for a release in whole, or in part, of any debt due to their county, and for the use thereof, when in their opinion, the interests of the county will not be prejudiced thereby; except in cases when they, or either of them are personally interested.

SEC. 19. No county commissioner shall, directly or indirectly, as contractor, be concerned in any contract for work to be done, or materials to be furnished for the county, under the penalty of two hundred dollars, to be recovered by an action of debt, for the use of the county; and such commissioner shall moreover forfeit any compensation he was to receive on such contract.

SEC. 20. The commissioners are authorized and empowered to administer all oaths or affirmations, necessary in discharging the duties of their office.

SEC. 21. Until proper buildings are erected at a place fixed upon, for the seat of justice in any county, it shall be the duty of the county commissioners to provide some suitable place for holding the courts of such county.

SEC. 22. Any person may appeal from the decision of the board of commissioners, to the next term of the district court, of the same county; such appeal shall be taken within fifteen days after such decision, and the party appealing shall notify the commissioners that the appeal is taken, at least ten days before the first day of the next term of the court appealed to; which notice shall be in writing, and shall be delivered personally to the commissioners, or left with the auditor of the county; and the party appealing shall give a bond to the county, with one or more surety or sureties, to be approved by the county auditor conditioned to pay all the costs, which shall be adjudged against him, on such appeal, in the said district court.

OF ASSESSORS.

Sec. 1. At the time of holding the general election in each year, there shall be elected in each of the counties of this territory an assessor, who shall have the qualifications of a voter as prescribed by law; and said assessors shall hold their office for one year, and until their successors are elected and qualified.

Sec. 2. The said assessors shall, each, before entering on the discharge of the duties of his office, give a bond to the county for which he was elected, with two or more sureties to be approved by the board of county commissioners in such penal sum as such board shall direct, conditioned for the faithful performance of his duties according to law; and shall take and subscribe an oath, faithfully and impartially to discharge the duties of his office according to law, and to the best of his abilities.

Sec. 3. The assessors, after qualifying as above prescribed, shall immediately receive from the county auditor a blank assessment roll, for their respective counties, and shall, in the months of July and August thereafter, assess all the taxable property within their respective counties, and shall deliver to the board of county commissioners, on or before their session in September, next following, a full and complete assessment roll, which roll shall set forth a full and precise description of the lands, or town lots, as owned by each person therein named, which description shall correspond with the plan or plot of the original survey, or the plan or plot of any town laid out and recorded; and said lands and town lots shall be valued at their true cash value, taking into consideration the improvements on the land, and in the surrounding country, the quality of the soil, its convenience to navigation, public roads, mill privileges, and other local advantages.

Sec. 4. All personal property not exempt from taxation shall be valued at its true value in cash, and it shall be the duty of each assessor to value all improvements on claimed land within his county as personal property.

Sec. 5. All property to be assessed shall be examined by the assessor, and in case of personal property, the owner thereof shall be notified of the time of such examination, if he is to be found, and any assessor may, at his discretion, swear any person to give a true account of his or her property, according to the best of his or her knowledge, and belief; and should any person or persons, when so required, refuse to testify as aforesaid, the assessor shall ascertain the taxable property of such person, or persons, from the best information to be derived from other sources.

Sec. 6. Each assessor shall give three weeks public notice in some newspaper, printed in their respective counties; if there be no such newspaper, then in some newspaper in general circulation in his county, or by posting up notices in six conspicuous places in his county, setting forth that, on the last Monday in August the assessor will attend at the office of the county auditor of his county, and with the assistance of said auditor, will publicly examine the assessment rolls, and correct all errors in valuations, descriptions, or qualities of lands, lots, or other property, and it shall be the duty of persons interested to appear at the time and place appointed, and if it shall appear during such examination that there is any lands, lots or other property assessed twice, or assessed beyond its actual value, or assessed in the name of a person, not the owner thereof, or any lands, lots, or other property not assessed, the auditor and assessor shall make the proper corrections.

SEC. 7. If any assessor shall fail to attend at the time and place required, he shall be liable for a violation of his duty, and suffer such fine or imprisonment, or both, as the district court shall impose—*Provided*, that it may be competent for any assessor, in case of his being prevented by sickness, or any other unavoidable cause, as above prescribed, to appoint some suitable person, having the qualifications of a voter, his deputy who shall perform all the duties of the assessor he represents, and for whose acts the said assessor shall be responsible, and said deputy shall, before he enters on the discharge of the duties of his office, take and subscribe before the county auditor an oath, faithfully and impartially to perform the duties devolving upon him, which oath shall be filed in the office of the county auditor.

SEC. 8. It shall be the duty of the assessor in each county to make out, and retain in his possession a duplicate of his assessment roll, and shall make the necessary corrections therein, so that such duplicate will correspond with the assessment roll on file, in the office of the county auditor, and also make a plot of the government survey, and town plots within his county, and note thereon the owner of each tract of land, and of each town lot, and deliver such duplicate assessment roll, and plot, and other documents relating thereto to his successor in office.

SEC. 9. Each assessor shall receive a compensation of five dollars per day, for each day actually and necessarily employed in the discharge of the duties of his office, and such reasonable compensation, for the copy of the assessment roll, and plot of the survey as the board of county commissioners may allow; which compensation shall be paid out of any moneys in the county treasury, not otherwise appropriated.

OF COUNTIES.

SEC. 1. Each county shall continue to be a body politic and corporate, for the following purposes; to wit: to sue and be sued; to purchase and hold for the use of the county, lands lying within its own limits, and personal estate; to make all necessary contracts, and to do all other necessary acts in relation to the property and concerns of the county.

SEC. 2. All real or personal estate heretofore conveyed, or which shall hereafter be conveyed, by any form of conveyance, and duly acknowledged and recorded, to the inhabitants of any county, or to the county treasurer, or to any committee or other persons, for the use of such county, shall be deemed the property of such county; and all such conveyances shall have the same force and effect as if they had been made to the inhabitants of such county by their corporate name.

SEC. 3. The county commissioners, or other public officers having the charge and management of the county lands, may by their order of record appoint agents to sell any of the real estate of their county; and all deeds made in behalf of the inhabitants of the county by such agent, under their proper hands and seals, and duly acknowledged and recorded, shall be sufficient, to all intents and purposes, to convey all the right, title and interest which the county may then have to such land so conveyed.

SEC. 4. All actions local or transitory, against any county, may be commenced and prosecuted to final judgment, in the district court of the county, against which suit is brought, or in an adjoining county at the plaintiff's election.

SEC. 5. All actions, whether local or transitory, brought by the inhabitants of a county, shall be brought either in the county in which the defendant lives, or in a county adjoining that by which the suit is brought; and when the defendant lives in a county adjoining that by which the action is brought, it shall be brought in an adjoining county.

SEC. 6. When any action shall be commenced against any county, service shall be made upon the clerk of the board of county commissioners, by leaving with him a copy of the summons and complaint or declaration, and such service shall be made at least thirty days before the return day. The inhabitants of any county so sued or suing, shall be competent jurors or witnesses, if otherwise competent or qualified according to law.

SEC. 7. Whenever any controversy or cause of action shall exist between any of the counties of this territory, or between any county and the territory, or an individual or individuals, such proceedings shall be had, for the purpose of finally trying and settling such controversy, and the same shall be conducted in like manner, and the judgment or decree shall have the same effect as in suits or proceedings between individuals and corporations.

SEC. 8. In all suits or proceedings by or against a county, the name in which the county shall sue or be sued, shall be "the board of commissioners of the county of (the name of the county)": but this provision shall not prevent other county officers, when authorized by law, from suing in their name of office, for the benefit of the county.

SEC. 9. Any action in favor of or against a county, which, if prosecuted by or against an individual, could be prosecuted before a justice of the peace, may be prosecuted by or against such county, in like manner before a justice of the peace.

SEC. 10. In all suits or proceedings prosecuted by or against counties, or by or against officers in their name of office, costs shall be recoverable as in suits between individuals.

SEC. 11. When any judgment shall be recovered against the board of county commissioners of any county, or against any county officer, in an action prosecuted by or against him in his name of office, where the same should be paid by the county, no execution shall issue on such judgment, except as hereinafter provided; the same, unless reversed, shall be levied and collected as other county charges, and when so collected, shall be paid by the county treasurer to the person in whose favor such judgment was rendered, upon the delivery to him of the proper voucher therefor: but if payment be not made within thirty days after the time the collector of taxes is required by law to make his return of county taxes, next after the rendition of such judgment, then, and in that event, execution may be issued on such judgment—*Provided*, that if at the time of the rendition of such judgment, there shall be sufficient funds belonging to the county in the treasury, it shall be the duty of the treasurer to pay the same, upon application being made to him by the person in whose favor such judgment was rendered, his agent or attorney.

SEALS.

SEC. 1. The description in writing of the great seal of the territory, shall be deposited and recorded in the office of the secretary of the territory, and shall remain a public record, and shall be and continue the description of the great seal of the territory; and the person administering the government of the territory, shall have the custody of the said seal; and all such matters and things as issue under the said seal, shall be entered on record in the office of the secretary of the territory.

SEC. 2. It shall be, and hereby is made the duty of the board of county commissioners of the several counties of the territory, to provide and furnish seals for such of the several district, county, and probate courts as are now unprovided with the same, and with such inscriptions and devices as the said courts shall respectively require.

SEC. 3. When any court of record shall be unprovided with a seal, the judge of said court may authorize the use of any temporary seal, or of any device by way of seal, until the same shall be provided as aforesaid.

SEC. 4. Any instrument to which the person making the same shall affix any device by way of seal, shall be adjudged and held to be of the same force and obligation as if it were actually sealed.

OF THE SALE OF LAND OF MINORS AND OTHER PERSONS UNDER GUARDIANSHIP, AND SECURING THE PROCEEDS FOR THEIR USE.

Sec. 1. When the income of the estate of any person under guardianship, whether as a minor, insane person, or spendthrift, shall be insufficient to maintain the ward and his family, his guardian may sell his real estate for that purpose, upon obtaining a license therefor, and proceeding therein in the manner hereinafter provided.

Sec. 2. When it shall appear, upon the representation of any such guardian, that it would be for the benefit of his ward, that his real estate or any part thereof should be sold, and the proceeds thereof be put out on interest, or invested in some productive stock, his guardian may sell the same accordingly, upon obtaining a license therefor, and proceeding therein as hereinafter provided.

Sec. 3. If the estate be sold for the maintenance of the ward and his family, as provided in the first section of this chapter, the guardian shall apply the proceeds of the sale for that purpose, so far as necessary, and shall put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital shall be wanted for the maintenance of the ward and his family, in which case the the capital may be used for that purpose as far as may be necessary, in like manner as if it had been the personal estate of the ward.

Sec. 4. If the estate is sold in order to put out and invest the proceeds, as provided in the second section, the guardian shall make the investment according to his best judgment, or in pursuance of any order of the probate court relating thereto.

Sec. 5. In every case of the sale of real estate, as provided in this chapter, the residue of the proceeds, if any remain upon the final settlement of accounts of the guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons, and in the same manner.

Sec. 6. In order to obtain a license for such sale, the guardian shall present to the probate court of the county in which he was guardian, a petition therefor, setting forth the condition of the estate of his ward, and the facts and circumstances on which it is founded, tending to show the necessity or expediency of such a sale, which petition shall be verified by the oath of the petitioner.

Sec. 7. If it shall appear to the court from such petition that it is necessary, or would be beneficial to the ward that such real estate, or some part of it, should be sold, the court shall thereupon make an order directing the next of kin of the ward, and all persons interested in the estate, to appear before such court at a time and place to be therein specified, not less than four, nor more than eight weeks from the time of making such order, to show cause why a license should not be granted for the sale of such estate.

SEC. 8. A copy of such order shall be personally served on the next of kin of such ward, and on all persons interested in the estate, at least ten days before the hearing of the petition, or shall be published at least three successive weeks, in such newspaper circulating in the county, as the court shall specify in such order.

SEC. 9. No such license shall be granted for the sale of any real estate of a ward, excepting that of a minor, unless the commissioners of the county of which the ward is an inhabitant, shall certify in writing their approbation of the proposed sale.

SEC. 10. Every guardian licensed to sell real estate as aforesaid, shall before the sale give bond to the judge of probate for the county in which he was appointed, with sufficient surety or sureties, with condition to sell the same in the manner prescribed for sales of real estate by executors or administrators, and to account for and dispose of the proceeds of the sale in the manner provided by law.

SEC. 11. Such guardian shall also, before fixing on the time and place of sale, take and subscribe an oath before the judge of probate, or some other officer competent to administer the same, in substance as follows—That in disposing of the estate which he is licensed to sell, he will use his best judgment in fixing on the time and place of sale, and that he will exert his utmost endeavors to dispose of the same in such manner, as will be most for the advantage of all persons interested therein.

SEC. 12. He shall also give public notice of the time and place of sale, and shall proceed therein in like manner as is prescribed for executors and administrators; and the evidence of giving such notice may be perpetuated in the same manner and with the same effect as is provided in the case of sales of real estate by executors and administrators.

SEC. 13. No license granted in pursuance of this chapter shall be in force for more than one year, after the time of granting the same.

SEC. 14. When any minor, insane person, or spendthrift residing out of this territory, shall be put under guardianship in the state or county in which he resides, and shall have no guardian appointed in this terrritory, the foreign guardian may file an authenticated copy of his appointment in the probate court of any county in which there may be real estate of the ward; after which he may be licensed by the probate court for the same county, to sell the real estate of the ward in any county in the same manner and upon the same terms and conditions as are prescribed in this chapter, in the case of a guardian appointed in this territory, except in the particulars hereinafter mentioned.

SEC. 15. Every foreign guardian so licensed to sell real estate shall take and subscribe the oath, in the like case of guardians appointed in this territory, and shall give notice of the time and place of sale, and conduct the same in the same manner prescribed for guardians appointed in this territory, and may perpetuate the evidence of the notice in the same manner.

SEC. 16. All the proceedings required to be had in any probate court in this territory, respecting such sale by a foreign guardian, shall be had in the court for the county in which the authenticated copy of his appointment is filed

SEC. 17. Upon every such sale by a foreign guardian, the proceeds of sale, or as much thereof as may remain upon the final settlement of the accounts of guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons, and in the same proportions as the real estate would have been according to the laws of this territory, if it had not been sold; and the foreign guardian shall, in every case before making the sale, give bond to the judge of probate, with sufficient surety or sureties, with condition to account for and dispose of the same according to law.

SEC. 18. If any person shall appear and object to the granting of any license prayed for under the provisions of this chapter, and if it shall appear to the court, that either the petition or the objection is unreasonable, the court may in its discretion award costs for the party prevailing in the case.

SEC. 19. No action for the recovery of any estate, sold by a guardian under the provisions of this chapter, shall be maintained by the ward, or by any person claiming under him, unless it be commenced within five years next after the termination of the guardianship; excepting only that persons out of the territory, and minors, and others under legal disability to sue at the time when the cause of action shall accrue, may commence their action, at any time within five years next after the removal of the disability, or after their return to the territory.

SEC. 20. In case of an action relating to any estate, sold by a guardian under the provisions of this chapter, in which the ward, or any person claiming under him, shall contest the validity of the sale, the same shall not be avoided on account of any irregularity in the proceedings—*Provided*, it shall appear;—

1. That the guardian was licensed to make the sale, by a probate court of competent jurisdiction;
2. That he gave a bond that was approved by the probate judge;
3. That he took the oath prescribed in this chapter;
4. That he gave notice of the time and place of sale, as prescribed by law; and
5. That the premises were sold accordingly, at public auction, and are held by one, who purchased them in good faith.

SEC. 21. If in relation to such sale, there should be any neglect, or misconduct in the proceedings of the guardian, by which any person interested in the estate shall suffer damage, such aggrieved party may recover such damage in a suit on the bond of such guardian, or otherwise as the case may require.

SEC. 22. If the validity of any sale, made by a guardian under the provisions of this chapter, shall be drawn in question, by any person claiming adversely to the title of the ward, or claiming under any title that is not derived from or through the ward, the sale shall not be held void, on account of any irregularity in the proceedings—*Provided*, that the guardian was licensed to make the sale, by the proper probate court, and that he did accordingly execute, and acknowledge in legal form, a deed for the conveyance of the premises.

OF ALIENATION BY DEED, AND THE PROOF AND RECORDING OF CONVEYANCES, AND THE CANCELLING OF MORTGAGES.

CHAPTER I.

SEC. 1. Conveyances of lands or of any estate or interest therein, may be made by deed, signed and sealed by the person, from whom the estate is intended to pass, being of lawful age, or by his lawful agent, or attorney, and acknowledged or proved, and recorded as directed in this chapter, without any other act, or ceremony whatever.

SEC. 2. A husband and wife may by their joint deed, convey the real estate of the wife, in like manner as she might do by her separate deed, if she were unmarried; but the wife shall not be bound by any covenant contained in such joint deed.

SEC. 3. A deed of quit claim and release, of the form in common use, shall be sufficient to pass all the estate, which the grantor could lawfully convey by a deed of bargain and sale.

SEC. 4. The term "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee simple; and any conveyance of any real estate hereafter executed, shall pass all the estate of the grantor, unless the intent to pass a less estate shall appear by express terms, or be necessarily implied in the terms of the grant.

SEC. 5. A conveyance made by a tenant for life or years, purporting to grant a greater estate, than he possessed or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant could lawfully convey.

SEC. 6. No covenant shall be implied in any conveyance of real estate, whether such conveyance contain special covenants or not.

SEC. 7. No mortgage shall be construed as implying a covenant for the payment of the sum, thereby intended to be recovered; and when there shall be no express covenant for such payment contained in the mortgage, and no bond or other separate instrument to secure such payment shall have been given, the remedies of the mortgage shall be confined to the lands, mentioned in the mortgage.

SEC. 8. No grant or conveyance of lands, or interest therein, shall be void for the reason, that at the time of the execution thereof, such lands shall be in the actual possession of another claiming adversely.

SEC. 9. Every conveyance or devise of lands, or interest therein, made to two or more persons, other than to executors and trustees as such, shall be construed to create a tenancy in common in such estate, unless it be expressly declared in such conveyance or devise, that the grantees or devisees shall take the lands as joint tenants.

SEC. 10. Deeds, executed within this territory, of lands or any interest in lands therein, shall be executed in the presence of two witnesses, who shall subscribe their names to the same as such, and the persons executing such deeds, may acknowledge the execution thereof before any judge of the district court, probate judge, or notary public within the territory, and the officer taking such acknowledgement shall endorse thereon a certificate of the acknowledgement thereof, and the true date of making the same, under his hand.

SEC. 11. If any deed shall be executed in any other state, territory, or district of the United States, such deed may be executed according to the laws of such state territory, or district, and the execution thereof may be acknowledged before any judge of a court of record, justice of the peace, or notary public, or other officer, authorized by the laws of such state, territory or district, to take the acknowledgement of deeds therein, or before any commissioner, appointed by the governor of this territory for such purpose.

SEC. 12. In the cases provided for in the last section, unless the acknowledgement be taken before a commissioner, appointed by the governor of this territory for that purpose, such deed shall have attached thereto a certificate of the clerk, or other proper certifying officer of a court of record of the county, or district within which such acknowledgment was taken, under the seal of his office, that the person, whose name is subscribed to the certificate of acknowledgment, was, at the date thereof, such officer as he is therein represented to be, and that he believes the signature of such person thereto to be genuine; and that the deed is executed and acknowledged, according to the laws of such state, territory or district.

SEC. 13. If such deed be executed in any foreign country, it may be executed according to the laws of such country, and the execution thereof may be acknowledged before any notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, charge des affaires, commissioner, or consul of the United States, appointed to reside therein; which acknowledgment shall be certified thereon by the officer taking the same under his hand, and if taken before a notary public, his seal of office shall be affixed to such certificate.

SEC. 14. When a married woman, residing in this territory, shall join with her husband in a deed of conveyance of real estate, situated within this territory, the acknowledgment of the wife shall be taken separately and apart from her husband, and she shall acknowledge that she executed such deed freely, and without fear or compulsion from any one.

SEC. 15. When any married woman, not residing in this territory, shall join with her husband in any conveyance of real estate situated within this territory, the conveyance shall have the same effect as if she were sole, and the acknowledgment or proof of the execution of such conveyance by the same as if she were sole.

SEC. 16. No acknowledgment of any conveyance having been executed shall be taken by any officer, unless he shall know, or have satisfactory evidence that the person making such acknowledgment, is the individual described in, and who executed such conveyance.

Sec. 17. Proof of the execution of any conveyance may be made before any officer, authorized to take acknowledgments of deeds, and shall be made by a subscribing witness thereto, who shall state his own place of residence, and that he knew the person described in, and who executed such conveyance; any such proof shall not be taken, unless the officer is personally acquainted with such subscribing witness, or has satisfactory evidence that he is the same person, who was a subscribing witness to such instrument.

Sec. 18. When any grantor is dead, out of this territory, or refuses to acknowledge his deed, and all the subscribing witnesses to such deed shall also be dead, or reside out of this territory, the same may be proved before the district court, or any judge thereof, by proving the hand-writing of the grantor, and of any subscribing witness thereto.

Sec. 19. Upon the application of any grantee, or any person claiming under him, verified by the oath of the applicant, setting forth that the grantor is dead, out of the territory, or refuses to acknowledge his deed, and that any witness to such conveyance, residing in the county where the application is made, refuses to appear and testify touching the execution thereof, and that such conveyance cannot be proven without his evidence, any officer, authorized to take the acknowledgment or proof of conveyances, except a commissioner of deeds, may issue a subpena, requiring such witness to appear, and testify before such officer, touching the execution of such conveyance.

Sec. 20. Every person, duly served with such subpena, who shall without reasonable cause refuse or neglect to appear, or appearing shall refuse to answer upon oath touching the matter aforesaid, shall forfeit to the injured party one hundred dollars, and may also be committed to prison, as for a contempt, by the officer, who issued such subpena, there to remain until he shall submit to answer on oath, as aforesaid.

Sec. 21. Every officer, who shall take the proof of any conveyance, shall endorse a certificate thereof, signed by himself on the conveyance; and in such certificate, shall set forth the matters hereinbefore required to be done, known, or proved, together with the names of the witnesses examined before such officer, and their places of residence, and the substance of the evidence by them given.

Sec. 22. Every conveyance, acknowledged or proved or certified in the manner hereinbefore prescribed, by any of the officers before named, may be read in evidence without further proof thereof, and shall be entitled to be recorded in the county in which the lands lie.

Sec. 23. Separate books shall be provided by the recorder of deeds in each county for the recording of deeds and mortgages; in one of which books all deeds left with such recorder shall be recorded at full length, with the certificates of acknowledgment, or proof of the execution thereof: and in the other, all mortgages left with the recorder shall in like manner be recorded.

Sec. 24. The recorder of deeds shall certify, upon every conveyance recorded by him, the time when it was received, and a reference to the book and page where it is recorded, and every conveyance shall be considered as recorded, at the time it was so received.

Sec. 25. The recorder shall also keep a proper index, direct and inverted, to the books for the recording of deeds, and also one to the books for the recording of mortgages, in which he shall enter alphabetically the name of every party to each and every instrument recorded by him, with a reference to the book and page where the same is recorded.

SEC. 26. Every conveyance of real property within this territory hereafter made, which shall not be recorded as provided in this chapter, shall be void against any subsequent purchaser in good faith, and for a valuable consideration, of the same real property, or any portion thereof, whose conveyance shall be first duly recorded.

SEC. 27. The record of a conveyance duly recorded, or a transcript thereof, duly certified by the recorder, in whose office the same may have been recorded, may be read in evidence in any court in this territory, with the like force and effect as the original conveyance; but the effect of such conveyance may be rebutted by other competent testimony.

SEC. 28. When a deed purports to be an absolute conveyance in terms, but is made or intended to be made defeasible by force of a deed of defeasance, or other instrument for that purpose, the original conveyance shall not be thereby defeated or affected, as against any person other than the maker of the defeasance, or his heirs, or devisees, or persons having actual notice thereof, unless the instrument of defeasance shall have been recorded in the office for the recording of deeds and mortgages of the county where the lands lie.

SEC. 29. The recording of the assignment of a mortgage shall not in itself be deemed notice of such assignment to the mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or either to the mortgagee.

SEC. 30. Any mortgage that has been or may hereafter be recorded, may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative, or assignee, acknowledging the satisfaction of the mortgage in the presence of the recorder of deeds, or his deputy, who shall subscribe the same as a witness; and such entry shall have the same effect as a deed of release duly acknowledged and recorded.

SEC. 31. Any mortgage shall also be discharged upon the record thereof, by the recorder in whose custody it shall be, whenever there shall be presented to him a certificate, executed by the mortgagee, his personal representatives or assigns, acknowledged or proved and certified as hereinbefore prescribed, to entitle conveyances to be recorded, specifying that such mortgagee has been paid, or otherwise satisfied or discharged.

SEC. 32. Every such certificate and the proof or acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book and page containing such record, in the minute of the discharge of such mortgage, made by the recorder upon the record thereof.

SEC. 33. If any mortgagee, or his personal representative or assignee, as the case may be, after full performance of the condition of the mortgage, whether before or after a breach thereof, shall for the space of ten days, after being thereto requested, and after tender of his reasonable charges, refuse or neglect to discharge the same as provided in this chapter, or to execute and acknowledge a certificate of discharge or release thereof, he shall be liable to the mortgager, his heirs or assigns in the sum of one hundred dollars damages, and also for all actual damages, occasioned by such neglect or refusal, to be recovered in an action at law.

SEC. 34. Every letter of attorney, or other instrument, containing a power to convey lands, as agent or attorney for the owner of such lands, and every executory contract for the sale or purchase of lands, when acknowledged or proved, in the manner prescribed in this chapter for the acknowledgment or proof of conveyances, may be recorded in the recorder's office of any county in which the lands to which such power or contract relates, may be situated; and when so acknowledged or proved, and the record thereof when recorded, or a transcript of such record duly certified, may be read in evidence in any court in this territory, without further proof of the same.

SEC. 35. No letter of attorney, or other instrument so recorded shall be deemed to be revoked by any act of the party by whom it was executed, unless the instrument containing such revocation be also recorded in the same office in which the instrument containing the power was recorded.

SEC 36. All conveyances of real property heretofore made and acknowledged, or proved in accordance with the laws of this territory, in force at the time of such making and acknowledgment of proof, shall have the same force as evidence, and be recorded in the same manner, and with the like effect as conveyances executed and acknowledged in pursuance of the provisions of this chapter.

SEC. 37. A scroll or device used as a seal upon any deed of conveyance, or other instrument whatever, whether intended to be recorded or not, shall have the same force and effect as a seal attached thereto, or impressed thereon, but this section shall not be construed to apply to such official seals, as are or may be provided for by law.

SEC. 38. When a new county shall be organized in whole or in part from an organized county, or from territory attached to such organized county for judicial purposes, all the records of deeds or other instruments relating to real property in such new county, may be transcribed into the proper books, by the recorder of deeds of such new county; which records, so transcribed, shall have the same effect in all respects as original records, and the recorder shall be paid for transcribing the same, such sum as the board of county commissioners in his county may deem just and reasonable.

Of the appointment of commissioners to take the acknowledgment of deeds, &c.

SEC. 39. The governor of this territory shall have power to appoint one or more commissioners in any state of the United States, who shall continue in office during the pleasure of the governor, and shall have authority to take the acknowledgment and proof of the execution of any deed, or other conveyance of lands, lying in this territory, or of any letter of attorney, or contract for the sale of such lands.

SEC. 40. Such acknowledgment or proof so taken, according to the laws of this territory, and certified to by any such commissioner, under his seal of office, annexed to or endorsed on such instrument, shall have the same power and effect as if the same had been made before any officer, authorized to perform such acts in this territory.

SEC. 41. Every such commissioner, before performing any duty, or exercising any power by virtue of his appointment, shall take and subscribe an oath or affirmation before a judge, or clerk of one of the courts of record of the state or territory, in which such commissioner shall reside, well and faithfully to execute and perform all the duties of such commission, under and by virtue of the laws of Oregon, which oath, with a description of his seal of office, shall be filed in the office of the secretary of this territory.

CHAPTER II.

Of Estates in Dower, by the Curtesy, and general provisions concerning real estate.

SEC. 1. The widow of every deceased person shall be entitled to dower, or the use during her natural life, of one third part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage, unless she is lawfully barred thereof.

SEC. 2. If a husband, seized of an estate of inheritance in lands, exchange them for other lands, his widow shall not have a dower of both, but shall make her election to be endowed of the lands given, or of those taken in exchange; and if such election be not evinced by the commencement of proceedings, to recover her dower of the lands given in exchange, within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

SEC. 3. When a person seized of an estate of inheritance in lands, shall have executed a mortgage of such estate before marriage, his widow shall be entitled to dower out of the lands mortgaged, as against every person except the mortgagee, and those claiming under him.

SEC. 4. When a husband shall purchase lands during coverture, and shall at the same time mortgage his estate in such lands, to secure the payment of the purchase money, his widow shall not be entitled to dower out of such lands as against the mortgagee, or those claiming under him, although she shall not have united in such mortgage; but she shall be entitled to dower as against all other persons.

SEC. 5. When in either of the cases mentioned in the two preceding sections, or in case of a mortgage in which she shall have joined with her husband, the mortgagee, or those claiming under him, shall, after the death of her husband, cause the mortgaged premises to be sold by virtue of such mortgage, and if any surplus shall remain, after payment of the moneys due thereon, and the costs and charges of the sale, such widow shall be entitled to the interest, or income of one third part of such surplus, for her life as dower.

SEC. 6. If, in either of the cases above specified, the heir, or other person claiming under the husband, shall pay and satisfy the mortgage, the amount so paid shall be deducted from the value of the land, and the widow shall have set out for her, for her dower in the mortgaged lands, the value of one third of the residue, after such deduction.

SEC. 7. When a widow shall be entitled to dower out of any lands, which shall have been aliened by the husband in his lifetime, and such lands shall have been enhanced in value after the alienation such lands shall be estimated, in setting forth the widow's dower, according to their value at the time they were so aliened.

SEC. 8. When a widow is entitled to dower in the lands, of which her husband died seized, and her right to dower is not disputed by the heirs, or devisees, or any person claiming under them or either of them, it may be assigned to her in whatever counties the lands may lie, by the judge of probate for the county, in which the estate of the husband is settled, upon application of the widow, or any other person interested in the lands; notice of which application shall be given to such heirs, devisees, or other persons in such manner, as the judge of probate shall direct.

SEC. 9. For the purpose of assigning such dower, the judge of probate shall issue his warrant to three discreet and disinterested persons, authorizing and requiring them to set off the dower by metes and bounds, when it can be done without injury to the whole estate.

SEC. 10. The commissioners shall be sworn by a judge of any court of record, or a justice of the peace, faithfully to discharge their duties, and shall as soon as may be, set off the dower according to the command of such warrant, and make return of their doings, with an account of their charges, and expenses, in writing to the probate court; and the same being accepted and recorded, and an attested copy thereof filed in the office of the recorder of deeds of the county where the lands are situated, the dower shall remain fixed and certain, unless such confirmation be set aside or reversed on appeal, and one half of the costs of such proceedings shall be paid by the widow, and the other half by the adverse party.

SEC. 11. When the estate, out of which dower is to be assigned, consists of a mill, or other tenement, which cannot be divided without damage to the whole, and in all cases where the estate cannot be divided by metes and bounds, the dower may be assigned of the rents, issues, and profits thereof, to be had and received by the widow, as a tenant in common with the other owners of the estate.

SEC. 12. When a widow is entitled to dower in the lands, of which her husband died seized, she may continue to occupy the same, with the children or other heirs of the deceased, or may receive one third part of the rents, issues, and profits thereof, so long as the heirs, or others interested, do not object, without having the dower assigned.

SEC. 13. A married woman may bar her right of dower, in any estate conveyed by her husband, or by his guardian, if he be a minor, by joining in the deed of conveyance, and acknowledging the same, as prescribed in the preceding chapter, or by joining with her husband in a subsequent deed, acknowledged in like manner.

SEC. 14. A woman may also be barred of her dower in all the lands of her husband, by a jointure settled on her with her assent before the marriage—*Provided*, such jointure consists of a freehold estate on lands, for the life of the wife at least, to take effect in possession, or profit immediately on the death of her husband.

SEC. 15. Such assent shall be expressed if the woman be of the full age of twenty-one, by her becoming a party to the conveyance by which it is settled, and if she be under that age, by her joining with her father or guardian in such conveyance.

SEC. 16. Any pecuniary provision that shall be made for the benefit of an intended wife, and in lieu of dower, shall, if assented to as provided in the preceding section, bar her right of dower in all the lands of her husband.

Sec. 17. If any such jointure or pecuniary provision be made before marriage, and without the assent of the intended wife, or if it be made after marriage, she shall make her election after the death of her husband, whether she will take such jointure or pecuniary provision, or be endowed of the lands of her husband, but she shall not be entitled to both.

Sec. 18. If any lands be devised to a woman, or other provision be made for her in the will of her husband, she shall make her election, whether she will take the lands so devised, or the provisions so made, or whether she will be endowed by the lands of her husband; but she shall not be entitled to both, unless it plainly appears by the will, to have been so intended by the testator.

Sec. 19. When a widow shall be entitled to an election, under either of the last two preceding sections, she shall be deemed to have elected to take such jointure, devise, or other provision, unless within one year after the death of her husband, she shall commence proceedings for the assignment or recovery of her dower.

Sec. 20. If a woman be lawfully evicted of lands assigned to her as dower, or settled upon her as jointure, or be deprived of the provision made for her by the will or otherwise, in lieu of dower, she may be endowed anew in like manner as if such assignment, jointure, or other provision had not been made.

Sec. 21. A woman being an alien shall not on that account be barred of her dower; and any woman residing out of the territory shall be entitled to dower of the lands of her deceased husband, lying in this territory, of which her husband died seized, and the same may be assigned to her, or recovered by her in like manner, as if she and her deceased husband had been residents within the territory, at the time of his death.

Sec. 22. No woman, who shall be endowed of any lands, shall not commit or suffer any waste on the same; but every woman so endowed shall maintain the houses and tenements, with the fences and appurtenances in good repair, and shall be liable to the person having the next immediate inheritance therein, for all damages, occasioned by any waste committed, or suffered by her.

Sec. 23. A widow may remain in the dwelling house of her husband one year, after his death, without being chargeable with rent therefor, and shall have her reasonable sustenance out of the estate for one year.

Sec. 24. Whenever in any action, brought for the purpose, a widow shall recover her dower in lands, of which her husband died seized, she she shall be entitled also to recover damages for the withholding of such dower.

Sec. 25. Such damage shall be one third part of the annual value of the mesne profits of the lands, in which she shall so recover her dower to be estimated, in a suit against the heirs of her husband, from the time of his death, and in suits against other persons, from the time of demanding her dower of such persons.

Sec. 26. Such damages shall not be estimated for the use of any permanent improvements made after the death of her husband, by his heirs, or by any other person claiming title to such lands.

Sec. 27. When a widow shall recover her dower in any lands, alienated by the heir of her husband, she shall be entitled to recover of such heir, in a civil action, her damages, for withholding such dower, from the time of the death of her husband, to the time of the alienation by the heir, not exceeding six years in the whole; and the amount which she shall be entitled to recover from such heir shall be deducted from the amount, she would otherwise be entitled to recover from such grantee; and any amount recovered as damages, from such grantee, shall be deducted from the sum, she would otherwise be entitled to recover from such heir.

Sec. 28. When the widow shall have accepted an assignment of dower, in satisfaction of her claim upon all the lands of her husband, it shall be a bar to any further claim of dower, against the heir of such husband, or any grantee of such heir, or any grantee of such husband, unless such widow shall have been lawfully evicted of the lands so assigned as aforesaid.

Sec. 29. When a widow, not having a right to dower, shall during the infancy of the heirs of the husband, or any of them, or of any person entitled to the lands, recover dower by the default or collusion of the guardian of such infant heirs, or other person so entitled, shall not be prejudiced thereby, but when he comes of full age, he shall have an action against such widow, to recover the lands so wrongfully awarded for dower.

Estates by the curtesy.

Sec. 30. When any man and his wife shall be seized in her right of any estate of inheritance in lands, the husband shall, on the death of his wife, hold the lands for his life, as tenant thereof by curtesy, although such husband and wife may not have had issue born alive.

General provisions.

Sec. 31. Every person in possession of land, out of which any rent is due, whether it was originally demised in fee, or for any other estate of freehold, or for any term of years, shall be liable for the amount or proportion of rent due from the land in his possession, although it be only a part of what was originally demised.

Sec. 32. Such rent may be recovered in an action at law, and the deed of demise, or other instrument in writing, if there be any, showing the provisions of the lease, may be used in evidence by either party, to prove the amount due from the defendant.

Sec. 33. Nothing contained in the two preceding sections shall deprive landlords of any other legal remedy for the recovery of their rents, whether secured to them by their leases, or provided by law.

Sec. 34. All estates at will, or by sufferance, may be determined by either party, by three months' notice in writing, given to the other party; and when the rent reserved in a lease at will is payable at periods of less than three months, the time of such notice shall be sufficient, if it be equal to the interval between the times of payment; and in all cases of neglect or refusal to pay the rent due on a lease at will, fourteen days' notice to quit, given in writing by the landlord to the tenant, shall be sufficient to determine the lease.

SEC. 53. Any alien may acquire and hold lands, or any right thereto, or interest therein by purchase, devise, or descent, and he may convey, mortgage, and devise the same, and if he shall die intestate, the same shall descend to his heirs; and in all cases such lands shall be held, conveyed, mortgaged, or devised, or shall descend in like manner, and with like effect, as if such alien were a native citizen of this territory, or of the United States.

SEC. 36. The title to any lands heretofore conveyed shall not be questioned, nor in any manner affected by reason of the alienage of any person, from or through whom, such title may have been derived.

SEC. 37. A person, seized of an estate in remainder or reversion, may maintain a civil action for any injury done to the inheritance, notwithstanding any intervening estate for life or years.

SEC. 38. One joint tenant, or tenant in common, and his executors or administrators, may maintain an action against his co-tenant, for receiving more than his just proportion of the rents or profits, of the estate owned by them as joint tenants, or tenants in common.

CHAPTER III.

Of fraudulent conveyances and contracts.

SEC. 1. Every conveyance or interest in lands, or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers, for a valuable consideration of the same lands, rents or profits, as against such purchasers shall be void.

SEC. 2. No such conveyance or charge shall be deemed fraudulent in favour of a subsequent purchaser, who shall have actual or legal notice thereof at the time of his purchase, unless it shall appear that the grantee in such conveyance, or person to be benefitted by such charge, was privy to the fraud intended.

SEC. 3. Every conveyance, or charge of, or upon any estate, or interest in lands, containing any provision for the revocation, determination, or alteration of such estate or interest, or any part thereof, at the will of the grantor, shall be void as against subsequent purchasers from such grantor for a valuable consideration, of any estate or interest, so liable to be revoked or determined, although the same be not expressly revoked, determined, or altered by such grantor, by virtue of the power reserved or expressed in such prior conveyance or charge.

SEC. 4. Where a power to revoke the conveyance of any lands, or the rents and profits thereof, and to re-convey the same, shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents, or profits, to a purchaser, for a valuable consideration such subsequent conveyance shall be valid, in the same manner and to the same extent, as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared.

SEC. 5. If a conveyance, to a purchaser under either of the last two preceding sections, shall be made before the person making the same shall be entitled to execute his power of revocation, it shall nevertheless be valid from the time, the power of revocation shall actually vest in such person, in the same manner, and to the same extent, as if then made.

SEC. 6. No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent, authorized by writing.

SEC. 7. The preceding section shall not be construed, to affect in any manner the power of a testator, in the disposition of his real estate, by a last will and testament; nor to prevent any trust from arising, or being extinguished by implication, or operation of law.

SEC. 8. Every contract, for the leasing for a longer period than one year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof be in writing, and signed by the party, by whom the lease or sale is to be made, or by some other person, by him lawfully authorized in writing.

SEC. 9. The consideration of any contract or agreement, required by the provisions of this chapter to be in writing, need not be set forth in the contract, or agreement, or in the note or memorandum thereof, but may be proved by any other legal evidence.

SEC. 10. Nothing, hereinbefore contained in this chapter, shall be construed to abridge the powers of courts of chancery, to compel the specific performance of agreements, in cases of part performance of such agreements.

Of fraudulent conveyances and contracts, relative to goods and chattels.

SEC. 11. All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods and chattels, or things in action made in trust for the person making the same, shall be void, as against the creditors, existing or subsequent, of such person.

SEC. 12. In the following cases specified in this section, every agreement, contract, and promise, shall be void, unless such agreement, contract, or promise, or some note or memorandum thereof, be in writing, and signed by the party to be charged therewith, or by some person by him lawfully authorized; that is to say:—

1. Every agreement that, by its terms, is not to be performed in one year from the making thereof;

2. Every special promise to answer for the debt, default, or miscarriage of another person;

3. Every agreement, promise, or undertaking, made upon consideration of marriage, except mutual promises to marry;

4. Every special promise made by an executor or administrator, to answer damages out of his own estate.

SEC. 13. Every contract for the sale of any goods, chattels, or things in action, for the price of fifty dollars, or more, shall be void, unless:—

1. A note or memorandum of such contract be made in writing, and signed by the party to be charged thereby, or by some person by him lawfully authorized; or,

2. Unless the purchaser shall accept and receive part of such goods, or the evidences, or some of them, of such things in action; or,

3. Unless the purchaser shall, at the time, pay some part of the purchase money.

SEC. 14. Whenever goods shall be sold at public auction, and the auctioneer shall at the time of sale, enter in a sale book, a memorandum, specifying the nature and price of the property sold, the terms of sale, the name of the purchaser, and the name of the person on whose account the sale is made; such memorandum shall be deemed a note of the contract of sale, within the meaning of the last section.

SEC. 15. Every sale made by a vendor of goods and chattels in his possession, or under his control, unless the same be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of the things sold, shall be presumed to be fraudulent and void as against the creditors of the vendor, or subsequent purchasers in good faith; and shall be conclusive evidence of fraud, unless it shall be made to appear to the jury, on the part of the person claiming under such sale, that the same was made in good faith, and without any intent to defraud creditors, or subsequent purchasers.

SEC. 16. The term "creditors," as used in the last section, shall be construed to include all persons, who shall be creditors of the vendor, at any time whilst such goods and chattels shall remain in his possession, or under his control.

SEC. 17. Nothing contained in the last two sections shall avoid or defeat any sale or transfer of any ship, boat, vessel, or goods at sea, or abroad, if the purchaser shall take possession of such ship, boat, vessel or goods, as soon as may be after the arrival thereof.

SEC. 18. Every mortgage or conveyance, intended to operate as a mortgage of goods and chattels, which shall hereafter be made, which shall not be accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers, and mortgagors in good faith, unless the mortgage, or a true copy thereof shall be filed in the office of the recorder of deeds in the county, where the mortgagor resides.

SEC. 19. Nothing, contained in the last section, shall be construed to apply to contracts of bottomry or respondentia, nor to assignments, or hypothecations of vessels or goods at sea, or in foreign ports.

SEC. 20. It shall be the duty of the recorder upon the presentation of any such instrument or copy for that purpose, and the payment of his fees, to endorse thereon the time of receiving the same, and to deposit such instrument or copy in his office, to be kept for the inspection of all persons interested.

SEC. 21. Such recorder shall also enter in a book, to be provided by him for that purpose, the names of all the parties to such instruments, arranging the names of all the mortgagors, alphabetically, and shall note therein the time of filing each instrument or copy.

Sec. 22. Every such mortgage shall cease to be valid as against the creditors of the person making the same, or subsequent purchasers or mortgagors in good faith, after the expiration of one year from the filing of the same, or a copy thereof, unless within thirty days, next preceding the expiration of the year, the mortgagee, his agent, or attorney, shall make and annex to the instrument, or copy on file as aforesaid, an affidavit setting forth the interest which the mortgagee has by virtue of such mortgage in the property therein mentioned, upon which affidavit the recorder shall endorse the time when the same was filed.

Sec. 23. The effect of any such affidavit shall not continue beyond one year, from the time when such mortgage would otherwise cease to be valid, as against the creditors of the person, making such mortgage, or subsequent purchasers, or mortgagees in good faith; but within thirty days next preceding the time when any such mortgage would otherwise cease to be valid as aforesaid, a similar affidavit may be filed, and annexed, as provided in the preceding section, and with like effect.

Sec. 24. A copy of any such instrument, or of any copy thereof, so filed as aforesaid, including any affidavits annexed thereto, in pursuance of this chapter, certified by the recorder in whose office the same shall be filed, shall be received in evidence, but only of the fact that such instrument, copy, or affidavit was received and filed, according to the endorsement of the recorder thereon, and of no other fact.

Sec. 25. The recorder shall be entitled to receive the following fees, for services under the provisions of this chapter; for filing each mortgage of goods and chattels, or a copy thereof, or affidavit, twenty-five cents; for entering the same in a book, twenty-five cents; for searching for each paper, fifteen cents; and the like fees for certified copies, or affidavits, as are allowed by law for copies of records, kept by the recorder of deeds.

General Provisions.

Sec. 26. Every conveyance or assignment in writing or otherwise, of any estate or interest in lands, or in goods, or things in action, or of any rents or profits issuing therefrom, and every charge upon lands, goods, or things in action, or upon the rents or profits thereof, made with the intent to hinder, delay, or defraud creditors, or other persons of their lawful suits, damages, forfeitures, debts, or demands, and every bond or other evidence of debt given, suit commenced, decree or judgment suffered with the like intent, as against the persons so hindered, delayed, or defrauded, shall be void.

Sec. 27. Every grant or assignment of any existing trust in lands goods or things in action, unless the same shall be in writing, subscribed by the party making the same, or by his agent, lawfully authorized, shall be void.

Sec. 28. Every conveyance, charge, instrument, or proceeding, declared by law to be void as against creditors, purchasers, or mortgagees, shall be equally void as against the heirs, successors, personal representatives or assigns of such creditors, purchasers, or mortgagees.

SEC. 29. The question of fraudulent intent, in all cases arising under the provisions of this chapter, shall be deemed a question of fact, and not of law.

SEC. 30. The provisions of this chapter shall not be construed in any manner to affect, or impair the title of a purchaser, for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

SEC. 31. The terms "lands," as used in this chapter, shall be construed as co-extensive in meaning, with "lands, tenements, and hereditaments," and the terms "estate and interest in lands," shall be construed to embrace every interest, freehold, and chattel, legal and equitable, present and future, vested and contingent, in lands as above defined.

SEC. 32. The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing, except a last will and testament, whatever may be its form, and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned, or surrendered.

OF ROADS AND FERRIES.

CHAPTER I.

SEC. 1. All county roads shall be under the supervision of the board of county commissioners of the county, wherein the said roads are located, and no county road shall be hereafter established nor shall any such road be altered or vacated in any county in this territory except by the authority of the board of county commissioners of the proper county.

SEC. 2. All applications for laying out, altering, or vacating county roads, shall be by petition to the board of county commissioners of the proper county, signed by at least twelve householders of the county, residing in the vicinity where said road is to be laid out, altered or vacated, which petition shall specify the place of beginning the intermediate points, if any, and the place of termination of said road.

SEC. 3 When any petition shall be presented for the action of the said board, for the laying out, alteration, or vacation of any county road, it shall be accompanied by satisfactory proof that notice has been given by advertisement posted up at the place of holding the county commissioners' court, and also in three public places in the vicinity of said road, or proposed road, thirty days previous to the presentation of said petition to the board, notifying all persons concerned, that application would be made to the said board at their session, for laying out, altering, or vacating such road (as the case may be).

SEC. 4. Upon the presentation of such petition and proof that notice has been given as provided in the last section the board of commissioners shall appoint three disinterested householders of the county as viewers of said road, and shall issue an order directing said viewers to proceed on a day named in such order, or on their failing to meet on that day, within five days thereafter to view and lay out, alter or vacate such road.

SEC. 5. The viewers so appointed, after receiving at least five days' previous notice, from one of the petitioners, shall meet at the time and place specified in the order of the commissioners, or within five days thereafter, and after taking an oath or affirmation before some person authorized to administer oaths, faithfully and impartially to discharge the duties of their appointment, shall forthwith proceed to view the road proposed to be vacated, or to view, select and mark said road as proposed to be laid out, or altered, according to the prayer of the petitioners, or as near the same as in their opinion a good road can be made. at a reasonable expense, taking into consideration the utility, convenience and inconvenience, and expense which will result to individuals as well as to the public, if such road shall be established or altered.

Sec. 6 The viewers or a majority of them, after having examined or viewed the road proposed to be laid out, altered or vacated, as prescribed in the last section, shall report in writing to the board of commissioners at their next regular session, stating the general face of the country, over which the said road passes, its general necessity, and utility, and whether in their opinion said road should be laid out, altered, or vacated as prayed for by the petitioners; and if the said viewers, or a majority of them, shall report unfavorably, the said road shall not be laid out, altered or vacated. If such report shall be favorable, it shall be the duty of said commissioners to cause the same to be publicly read, on two different days of the same meeting, and then laid over until their next regular session, and if no application shall be made to them for a review, or alteration of said road, or petition for damages, between the first day of the session at which the report is made, and the second day of their next regular session, the report of the viewers shall be confirmed and adopted.

Sec. 7. When the viewers shall have reported in favour of the prayer of the petitioners, as provided in the preceding section; it shall be lawful for any householder of the county, at any time before such report shall be confirmed and adopted, to apply to the commissioners for a review of said road, by petition signed by at least twelve householders residing in the vicinity of such road, or proposed road, and the commissioners shall, on such petition being presented, and they satisfied that it was just and reasonable, appoint five disinterested householders of the county, to review said road, and shall issue an order to said viewers, directing them to proceed on a day named in such order, or within five days thereafter to review the same and report thereon.

Sec. 8. The viewers so appointed to review such road, or a majority of them, after having received at least five days' previous notice by one of the petitioners for the review, and after taking an oath or affirmation, as prescribed in section five, shall proceed to examine the road or proposed road, viewed by the former viewers, and shall make a report in writing, to the board of commissioners at their next regular session, stating their opinion in favor of or against such road, and their reasons for the same; and if the viewers, or a majority of them, be in favor of laying out, altering, or vacating such road, as recommended by the former viewers, such report shall be adopted and confirmed by the commissioners, at the same session at which it was received; but if such report be against laying out, altering or vacating such road as recommended by the former viewers, no further proceedings shall be had thereon before the commissioners.

Sec. 9. If any person, through whose lands any county road may be viewed and marked out, shall feel that he would be injured by the opening of the same, such person may make complaint thereof in writing, to the board of county commissioners, at any time after the report of the viewers, appointed to review said road, is received, and before the second day of the next regular session of the commissioners; and if such complaint be made, the commissioners shall appoint three disinterested householders of the county, who shall meet, at such time as may be designated by the commissioners, or at such time as may be agreed upon by such householders, and after having been duly sworn or affirmed to discharge their duty faithfully and impartially, shall proceed and view said proposed road the whole distance through the premises of the complainant, and assess and determine how much less valuable such premises of the complainant would be rendered by the opening of said road, and they shall report the same in writing to the commissioners, at their next regular meeting thereafter.

SEC. 10. If the commissioners be satisfied that the amount of damages so assessed, and determined, is just and equitable, and that the proposed road will be of sufficient importance to the public to cause the damages so assessed and determined to be paid by the county, they shall order the same to be paid to the complainant, out of the county treasury; but if, in their opinion, such proposed road is not of sufficient importance to the public, to cause such damages to be paid by the county, they may refuse to establish the same as a public highway, unless the expenses or damages, or such part thereof as the commissioners may think proper, shall be paid by the petitioners.

SEC. 11. Any complainant, who may conceive himself aggrieved by the assessment of damages as prescribed by the last two sections, may, within twenty days after such report is adopted by the commissioners, appeal therefrom to the district court of the proper county, such appeal shall be tried in the district court, in the same manner as appeals from justices of the peace, and if the appellant shall fail to recover a judgment more favorable than the report appealed from, he shall pay all costs of the appeal.

SEC. 12. When the report of the viewers appointed to view and lay out, alter or vacate any road shall be confirmed and adopted, and the damages assessed and determined, if any shall be ordered by the commissioners to be paid, they shall order such road to be laid out, altered or vacated, according to the report of the viewers, and shall forthwith issue an order, under the seal of the board of commissioners, to some skilful and competent surveyor, directing him forthwith to survey said road as located and marked by the viewers; and such surveyor shall take to his assistance two chain-bearers and one marker, and proceed to survey such road and cause the same to be conspicuously marked throughout, noting the corners and distances, and at the end of each mile, shall cause the number of the same, and also the commencement and termination of said road, or survey, to be marked on a tree or monument erected for that purpose; and he shall make out a correct and certified return of the survey of said road, and a plot of the same, and deliver said return and plot to the commissioners or their clerk, on or before the day of their first regular meeting, next ensuing after the date of the order of the survey of said road, and he shall also furnish at the same time a true and certified account of the time necessarily consumed in making such survey; and the board of commissioners shall immediately thereupon direct orders to be drawn on the county treasurer for the payment of the same, allowing the surveyor six dollars, for each day necessarily employed in the survey, and making the return and plot, and the chain bearers, and marker, each three dollars, for every day necessarily employed by said surveyor, in the survey of said road.

SEC. 13. Upon receiving the return and plot of any road, the commissioners shall order the same to be recorded in a book, to be kept for that purpose, and from thenceforth said road shall be considered a public highway, and the commissioners shall issue their order directing the same to be opened; and all county roads shall be sixty feet in width, unless the commissioners shall, upon the prayer of the petitioners for the same, determine on a less number of feet in point of width.

SEC 14. When the place of beginning or true corner of any public road shall become uncertain, by reason of the removal of any marked tree or monument, by which such road was designated, or from any other cause, the board of commissioners of the proper county may appoint three disinterested householders of the county to review, and if they deem it necessary, to straighten such road; and the reviewers shall cause the said road to be correctly surveyed and marked throughout, as in case of new roads, and shall make a return of the survey, and plot of such road, to the commissioners of the proper county, who shall cause the same, if approved by them, to be recorded as in other cases; and from thenceforth such road, surveyed as aforesaid, shall be considered as the public highway.

SEC. 15. If any person or persons, through whose lands any public highway is or may be established, shall be desirous of turning such road through any other part of his or their lands, such person or persons may by petition, agreeably to the second and third sections of this chapter, apply to the commissioners of the proper county, to permit him or them, to turn such road through any other part of his or their land, on as good ground, and without materially increasing the distance, to the injury of the public; and on the receipt of such petition, accompanied by a sufficient bond or undertaking, to pay the costs and expenses to be incurred thereby, the commissioners shall appoint three disinterested householders as viewers, and a surveyor, who, or a majority of such viewers, shall proceed to view the ground over which the road is proposed ro be turned, and ascertain the distance such road will be increased by the proposed alteration, and make out a report in writing, stating the several distances so found, together with their opinion as to the utility of making such alteration; and if the viewers, or a majority of them, shall report to the commissioners, that the prayer of the petitioner, or petitioners, is reasonable, and that the proposed alteration will not place the road on worse ground, or materially increase the distance to the injury of the public, they shall order the same to be so altered; and upon receiving satisfactory evidence that the proposed new road has been opened a legal width, and in all respects made equal to the old road, for the convenience of travellers, the commissioners may declare such new road a public highway, and make record thereof, and at the same time vacate so much of the old road as is embraced in the new, and the person, or persons, petitioning for the alteration, shall pay all the costs, and expenses of the view, survey, and return of such alteration.

SEC. 16. The compensation of viewers and reviewers shall be four dollars for every day, that they shall be necessarily employed in discharging their duties, and if any such viewer or reviewer shall refuse or neglect to perform the duties required by this chapter, without making satisfactory excuse for such refusal or neglect, he shall be fined by the commissioners in any sum not exceeding ten dollars, to be recovered by action before a justice of the peace of the proper county, which fine when collected shall be paid over without delay, into the county treasury.

SEC. 17. Upon application being made under the provisions of this chapter, for a view or review of any public road, proposed to be laid out, altered or vacated, the commissioners shall, before issuing their order to the viewers, require a bond or undertaking to be executed by one or more of the petitioners for such view or review, with sufficient surety to be approved by the commissioners or their clerk, and made payable to the board of commissioners, in such sum as they shall direct, not exceeding two hundred dollars, conditioned that if the prayer of the petitioners be not granted, and allowed, the persons executing such bond or undertaking will pay all costs and expenses, that may be incurred by reason of such view or review.

Of locating private ways.

SEC. 18. Any person whose land shall be so situated, that it has no connection with any public road, may make application in writing to the board of commissioners of his county, at a regular session, for a private road leading from his premises, to some convenient public road, and thereupon the said commissioners shall appoint three disinterested householders of the county as viewers, and shall issue an order directing them to meet on a day named in such order, to view and locate a private road according to the application, and to assess the damages to be sustained thereby; and after being duly sworn or affirmed faithfully and impartially to discharge the duties of their appointment, and after at least three days' notice, given to all persons, through whose lands such private road is to be located, such viewers shall proceed to locate and mark out a private road, thirty feet in width, from some certain point on the premises of the applicant, to some certain point on the public road, so as to do the least damage to the lands, through which such private road is located, and they shall also at the same time assess the damages sustained by the person, or persons owning such lands.

SEC. 19. The viewers so appointed, or a majority of them shall make a report to the commissioners at their next regular session, of the private road so located by them, and also the amount of damages, if any, assessed by them, and the person or persons entitled to such damages; and if the commissioners are satisfied that such report is just, and after payment by the applicant, of all costs of locating such road, and the damages assessed by the viewers, they shall order such report to be confirmed, and declare such road to be a private road, and the same shall be recovered as such, and any person, aggrieved by the assessment of damages, may appeal, within twenty days after such confirmation of the report, to the district court, and such appeal shall be tried as appeals from the assessment of damages in case of county roads.

Of the manner of locating territorial roads.

SEC. 20. Every territorial road, to be hereafter located, shall be viewed, surveyed, and returns thereof made, according to the provisions of this chapter, within one year from the passage of the act, authorizing such road to be laid out, and the width of all territorial roads shall be sixty feet.

SEC. 21. The commissioners, appointed to locate any territorial road, after having taken an oath or affirmation faithfully and impartially to discharge the duties of their appointment, shall proceed to view and locate such road, and shall cause the same to be correctly surveyed and marked throughout, from the beginning to the end, in the same manner, that county roads are required to be surveyed and marked, and such commissioners, or a majority of them, shall make a report, descriptive of the general face of the country, over which such road passes, accompanied by a plot of the survey certified by the surveyor, which report and plot shall, within sixty days after the view and survey, be delivered to the secretary of the territory, to be by him filed and recorded; and within the same period of sixty days, they shall in like manner deposit in the office of the clerk of the board of county commissioners of each county, through which such road passes, a report and plot as aforesaid of so much of said road as shall be located in such county, to be there recorded as aforesaid.

SEC. 22. The commissioners, appointed to locate any territorial road shall, after the completion of the survey of the same, make out a certified account of all the services rendered, as well by themselves as by the surveyor, and other persons employed, charging each county, through which said road may have been laid out, a proportion of the expenses, according to the number of the days employed in such county; ane the board of county commissioners shall audit, and order the same to be paid out of the county treasury.

SEC. 23. When any person, through whose lands any territorial road may be located, shall conceive that he would be injured by the opening of the same through his premises, he may within six months, after the filing of the report and plot of survey of such road, in the office of the clerk of the board of commissioners of such county, make complaint in writing to such commissioners, setting forth such damage, and thereupon the same proceedings shall be had to assess, and determine the damages sustained by such complainant, as in case of county roads, and such damages shall be paid out of the treasury of the county, in which the lands are situated.

Sec. 24. When any territorial road shall have been located, according to the provisions of this chapter. the same shall be and remain a public highway, and shall be opened and worked by the counties, through which it may be laid out, as county roads are, and such road may be altered or changed in any county, in the same manner as county roads are altered.

Of road supervisors, and their duties.

SEC. 25. The several boards of county commissioners shall, as often as they may deem necessary, but not oftener than once a year, divide their respective counties, or any part thereof into suitable and convenient road districts, and cause a brief description of the same to be entered on the county records.

SEC. 26. The board of commissioners shall annually, at their session in April, appoint one supervisor of roads for each road district in the county, and may at any time fill vacancies that may occur in such office, and they shall cause the supervisors by them appointed to be notified thereof in writing. Each supervisor shall hold his office, until the following April session of the commissioners, and before entering upon the discharge of his duties, shall take an oath or affirmation, faithfully to discharge the duties of his office, and if required by the commissioners shall execute an undertaking to the board of commissioners, with one or more sureties, in any sum specified by them, not exceeding one thousand dollars, conditioned that he will faithfully account for, and pay over according to law, all moneys that may come into his hands by virtue of his office.

SEC. 27. It shall be the duty of every supervisor of roads, on or before the fifteenth day of May, to obtain the names, and make out in alphabetical order, a list of all persons, liable to perform labor on the public roads, residing within his road district, and to affix to each name therein the number of days' work, which such person shall be assessed to perform.

SEC. 28. In making such estimate and assessment the supervisor shall proceed as follows:—

1. He shall assess one day's work to be performed by every person, residing in his road district, for each and every one thousand dollars valuation of taxable property, owned by him, assessed for county rates, and levies the last preceding year;

2. He shall assess one additional day's work, to be performed by every male between twenty-one, and fifty years of age, except ministers of the gospel, and persons who are a public charge, or too infirm to perform labor.

SEC. 29. Whenever the supervisor shall from any cause have neglected or omitted to place on his list, and assess any person, within the time required by law, he shall at any time afterwards, place the name of such person on the list, and assess the number of days' work to be performed by him, which assessment shall in all respects be valid, as if made in due time.

SEC. 30. The supervisor shall notify every person within his road district, subject to road labor as aforesaid, between the first days of April and October annually, to perform the work assessed on the public roads within his district, and if any person, subject to road labor as aforesaid, shall after three days' previous notice, either personally, or by writing, left at his usual place of abode, by the supervisor or any other person by direction of the supervisor, neglect or refuse to attend by himself, or suitable substitute, at the time and place designated by the supervisor; or having attended shall refuse to obey the directions of the supervisor, or shall pass his time in idleness, and inattention to the duties assigned him, every such delinquent shall forfeit and pay for each day, he shall neglect or refuse to attend, or for any of the offences above specified in this section, the sum of five dollars, to be recovered in a civil action, at the suit of the supervisor, before any justice of the peace having competent jurisdiction, or, if the aggregate amount of such sums be over one hundred dollars, by action in the district court, and all moneys so collected shall be appropriated as hereinafter directed.

SEC. 31. Whenever it shall happen in consequence of sickness, absence from home, or any other good cause, that a person liable to perform work as aforesaid does not attend, in obedience to the notice of the supervisor, at the time and place appointed, and such person is willing to perform, or cause to be performed, the labor required by this chapter, no process shall be issued for the recovery of the penalty above prescribed but the supervisor shall employ such person, or his substitute, at another time and place, to be designated by such supervisor.

SEC. 32. Every person notified to labor on the public roads, under the provisions of this chapter, shall be required to appear, at the place appointed by the supervisor, at the hour of eight o'clock in the forenoon, with such necessary tools and implements as said supervisor may direct; and such supervisor may, if he deem it necessary, order any person owning the same to furnish a team of horses, mules, or oxen, and wagon, cart, scraper, or plough, to be employed or used on the roads, under the direction of such supervisor, who shall allow such person a reasonable compensation, for the use of such team, wagon, cart, scraper or plough, in discharge of any labor due from such person.

SEC. 33. It shall be the duty of every supervisor to collect by suit or otherwise, in his own name, as such supervisor, all fines, forfeitures, and penalties, arising and accruing under the provisions of this chapter, for the non-performance of labor, and to expend the same in the employment of men, when necessary, to put the public roads of his road district in good repair, and if any portion of the moneys collected by him shall not be so expended, he shall pay the same over to the county treasurer, on or before the first of April, annually, and take his receipt for the same, which receipt shall be a proper voucher, for the supervisor to settle with the county commissioners for the amount thereof; and the commissioners shall cause all moneys so paid into the county treasury, to be appropriated to repairing the roads in such road district, where such fine, forfeiture, or penalty accrued.

SEC. 34. The supervisors of roads shall open, or cause to be opened, all public roads, which may have been, or may hereafter be laid out and established according to law, in any part of his road district, and shall keep the same in good repair; and he shall have authority to purchase, with any money, which may come into his hands as supervisor, for the use of his road district, any ploughs, scrapers, or other implements, which he may think proper; and to enter upon any lands adjoining or near the public road, and gather, dig, and carry away any stone, gravel or sand, and cut down and carry off any trees or wood, necessary for the making and repairing any public road; and to purchase and pay for any timber, plank, or other materials necessary for making or repairing any public road in his district; and to enter upon any lands adjoining or lying nea any public road in his road district and cut, open, or construct such drains and ditches, as he shall deem necessary for the making or preservation of such road, doing as little injury as may be to such lands; and any person stopping or obstructing the drains or ditches so made shall forfeit the sum of twenty dollars for each offence, to be recovered and appropriated as provided in the last section.

SEC. 35. If any person shall feel aggrieved, by the act of any supervisor cutting or carrying away timber or stone as aforesaid, he may make complaint thereof in writing to the county, at any regular meeting within six months after the cause of such complaint shall exist, and such commissioners shall proceed to assess and determine the damages, if any sustained by the complainant, and cause the same to be paid out of the county treasury.

Sec. 36. Every supervisor shall erect and keep up at the forks of every highway, and every crossing of public roads within his road district, a guide or finger board, containing an inscription in legible letters, directing the way and specifying the distance to the next town, or public place situated on each road respectively.

Sec. 37. If at any time during the year any public road shall become obstructed, by the falling of timber, or from any other cause, or any bridge shall be impaired or become dangerous for the passage of teams or travelers, the supervisor of the road district, upon being notified thereof, shall forthwith cause such obstruction to be removed, or bridges repaired; for which purpose he shall immediately order out such number of the inhabitants of his district, as he may deem necessary to remove such obstruction, or repair such bridge; and all persons so ordered out shall, after having received one day's notice, be subject to the same restrictions, and liable to the same penalties, as if ordered out under the thirtieth section of this chapter.

Sec. 38. In all cases, when any person shall, under the direction of the supervisor of roads, perform more labor upon the public roads than may be due from him, the supervisor shall give such person a certificate specifying the amount of extra labor so performed, which certificate may be transferred, and received in discharge of the labor of any other person, within the same road district, to the amount of labor specified in such certificate, or may be received from the holder in satisfaction of labor on the roads, in such road district, in any subsequent year, for the amount of labor specified therein.

Sec. 39. Every supervisor shall keep an account of the number of days' work, performed on the public roads in his road district, and of the persons performing the same; he shall also keep an account of all moneys received by him from delinquents or for fines or penalties, and the persons from whom received; and also an account of his expenditures as supervisor during his term of office, and such supervisor shall present his accounts to the board of commissioners for settlement, at their April session, in each year, and shall pay over to the county treasurer all moneys, remaining [illegible] hands as such supervisor, taking a receipt therefor; and [illegible] isor shall fail to appear, and make a settlement as requ[illegible] ion, the board of county commissioners may, by an action [illegible] court of the proper county, against such supervisor, en[illegible] lement and recover any balance remaining in his hands[illegible]

Sec. 40. In [illegible] se, the supervisor of roads shall be unable to collect from [illegible] the amount of any tax, forfeiture, fine or penalty, as provided in this chapter, it shall be the duty of such supervisor to return a list of such delinquents, certified on oath, to the board of commissioners of the county, at their session in April, and the commissioners shall after adding ten per cent. to the amount, due by such delinquent, furnish the sheriff of the proper county, with a true copy of such list, and the amount due from each, with a precept thereto attached, under seal of said board of commissioners, and the sheriff shall thereupon proceed to collect the same in like manner, and under the same provisions, that the county revenue is collected.

SEC. 41. Any supervisor of roads, who shall neglect or refuse to perform the several duties, enjoined upon him by this chapter, or who shall under any pretence whatever give or sign any receipt or certificate, purporting to be a receipt or certificate for money paid and labor performed, unless the money shall have been paid or the labor performed, prior to the giving or signing such receipt or certificate, shall forfeit for every such offence, not less than five nor more than fifty dollars for the use of his county, to be recovered before any justice of the peace, having jurisdiction of the same, in the name of the board of commissioners, and it is hereby made the duty of the commissioners to sue for the same.—*Provided*, that if any supervisor conceive himself aggrieved by the decision of the justice of the peace, he may appeal to the district court as in other cases.

SEC. 42. Every supervisor of roads shall receive for each day, necessarily employed in the performance of any of the duties required by this chapter, over and above the number of days' work required by law to be performed by such supervisor, the sum of four dollars, to be paid out of the county treasury, on the order of the board of commissioners, after being sanctioned by them, and after the report of the doings of said supervisor shall have been received, approved and settled by said board of commissioners.

Of the regulation of ferries.

SEC. 43. The board of commissionets of any county in this territory may grant a license to any person, entitled to and applying therefor, to keep a ferry across any lake or stream within their respective counties, upon being satisfied that a ferry is necessary at the point applied for, which license shall continue in force for a term to be fixed by the commissioners, not exceeding two years.

SEC. 44. The board of commissioners shall tax such sum as may appear reasonable, not less than one nor more than one hundred dollars per annum for such license, and the person to whom such license shall be granted shall pay to the county treasurer the tax for one year in advance, taking his receipt therefor, and upon the production of such receipt, the clerk of the board of commissioners shall [illegible] license under the seal of the board of commissioners.

SEC. 45. No such license shall be [illegible], other than the owner of the land, embracing such [illegible] the ferry is proposed to be kept, unless such owner [illegible] apply for such license, and whenever application shall [illegible] license by any person, other than such owner, the board [illegible] shall not grant the same, unless proof shall be made [illegible] applicant caused notice in writing, of his intention to make such application, to be given to such owner, if residing in the county, at least ten days before the session of the board of commissioners, at which application is made.

SEC. 46. Every person, intending to apply for a license to keep a ferry at any place, shall give notice of such intention, by posting up at least three notices in public places in the neighborhood, where the ferry is proposed to be kept, twenty days prior to any regular session at the board of commissioners, at which the application shall be made—*Provided*, that when application shall be made for a renewal of a license where the former license has expired, the same may be granted or renewed, without previous notice or petition.

Sec. 47. Every person, applying for a license to keep a ferry, shall, before the same is issued, enter into a bond or undertaking with one or more sureties, to be approved by the clerk of the commissioners, in a sum not less than one hundred nor more than five hundred dollars, conditioned that such person will keep said ferry according to law, and if default shall at any time be made in the condition of such bond or undertaking, damages not exceeding the penalty may be recovered by any person aggrieved, before any court having competent jurisdiction.

Sec. 48. Every person obtaining a license to keep a ferry shall provide, and keep in good and complete repair, the necessary boat or boats for the safe conveyance of all persons and property, and furnish such boats at all times with suitable oars, setting poles, and other implements necessary for the service thereof, and shall keep a sufficient number of discreet and skillful men to attend and manage the same, and he shall also, at all times, keep the place of embarking and landing in good order and repair, by cutting away the banks of the stream, so that persons and property, may be embarked and landed without danger, or unnecessary delay.

Sec. 49. Every person obtaining a license, as aforesaid, shall give constant and diligent attention to such ferry, from daylight in the morning until dark in the evening of each day, and shall moreover at any hour in the night, if required, except in cases of evident danger, give passage to all persons requiring the same on the payment of double the rate of ferriage allowed to be taken in the day time; and if he shall at any time neglect or refuse to give passage to any person or his property, he shall forfeit and pay to the party aggrieved, for every such offence the sum of five dollars, to be recovered before any justice of the peace having jurisdiction, and he shall moreover be liable in an action at law for any special damage which such person may have sustained in consequence of such neglect or refusal; but no forfeiture or damages shall be recovered for a failure or refusal to convey any person or property across such stream when it is manifestly hazardous to do so, by reason of any storm, flood, or ice; nor shall any keeper of a ferry be compelled to give passage to any person or property, untill the fare or toll chargeable by law shall have been fully paid, or tendered to such keeper.

Sec. 50. Whenever the board of commissioners of any county shall grant a license to keep a ferry across any lake or stream, such board shall establish the rates of ferriage which may lawfully be demanded for the transportation of persons and property across the same, having due regard to the breadth and situation of the stream, and the dangers and difficulties incident thereto, and the publicity of the place at which the same shall have been established; and every keeper of a ferry, who shall at any time demand and receive more than the amount so designated [illegible] shall forfeit and pay to the party aggrieved for every such charge the sum of five dollars, over and above the amount which shall have been illegally exacted, to be recovered before any justice of the peace having jurisdiction.

Sec. 51. Every person licensed to keep a ferry shall post up, in some conspicuous place near his ferry landing, a written or printed list of the rates of ferriage which are chargeable by law at such ferry, which list of rates shall at all times be written or printed in a plain legible manner, and posted up so near the place where persons shall pass across such ferry that the same may be easily read; and if at any time such keeper shall neglect or refuse to post and keep up such list, it shall not be lawful to charge or take any ferriage or compensation at such ferry, during the time of such delinquency.

Sec. 52. All persons shall be received into the ferry boats and conveyed across the stream, over which such ferry shall be established, according to their arrival at the same, and if any keeper of a ferry shall act contrary to this regulation, he shall forfeit and pay the sum of three dollars for every such offence, to the party aggrieved, to be recovered before any justice of the peace having jurisdiction—*Provided*, that public officers, on urgent business, post-riders, couriers, physicians, surgeons, and midwives, shall in all cases be first carried over where all cannot go at the same time.

Sec. 53. Every person licensed to keep a ferry, according to the provisions of this chapter, shall have the exclusive privilege of transporting all persons and property, over and across the stream, where such ferry is established, and shall be entitled to all the fare, arising by law therefrom—*Provided*, that nothing herein contained shall be construed to prevent any person from crossing over such stream at such ferry in his own boat, or to take in and carry over his neighbor, when the same is done without fee or charge, and not with intent to injure any person licensed to keep a ferry.

Sec. 54. If any person, licensed to keep a ferry, shall fail to pay the tax assessed thereon, when due, or shall not provide and keep in good and complete repair, the necessary boat or boats, with the oars, setting poles, and other necessary implements for the service thereof, or shall neglect to employ a sufficient number of skillful and discreet ferrymen, as is provided in the forty-eighth section of this chapter, within three months from the time license shall be granted; or if such ferry shall not at any time be kept in good condition and repair, agreeably to the provisions of this chapter; or if the same shall be abandoned, disused, or unfrequented for the space of six months, at any one time, it shall be lawful for the board of commissioners of the proper county, on complaint being made in writing, to summon the person licensed to keep such ferry, to show cause why such license should not be revoked, and to decide thereon according to the testimony adduced, and the laws of this territory, which decision, when made shall be valid, to all intents and purposes, but subject to an appeal to the district court, within twenty days after such decision shall be made—*Provided*, that if any ferry shall be disused by reason of the stream, over which the same is established, being fordable at certain seasons of the year, or by reason of the travel being subject to periodical fluctuations, it shall not work a forfeiture, within the meaning of this section.

Sec. 55. Any person who shall maintain any ferry, and receive pay for ferriage, without first obtaining a license for the same, shall pay a fine of ten dollars for each offence, to be collected for the use of the county, by suit before any justice of the peace having jurisdiction, and any person is hereby authorized to bring such suit—*Provided*, that it shall not be considered unlawful for any person to transport any other person or his property over any stream for hire, when it shall be made evident that any ferry, established at such place was not in actual operation at the time, or in sufficient repair to have afforded to such person or his property a safe and speedy passage.

TREASURY DEPARTMENT.

An Act to regulate the Treasury Department.

ARTICLE 1.

The organization of the Department.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* A separate department is hereby established, to be called the Treasury Department; which shall embrace the offices of the territorial treasurer, and the auditor of public accounts.

SEC. 2. The treasurer and auditor shall reside, and keep their respective offices at the seat of government.

SEC. 3. The treasurer and auditor shall be commissioned by the governor; and before entering upon their respective duties, shall take oath of office before any judge or justice of the peace prescribed by the laws of this territory, and shall cause the same to be endorsed on their respective commissions, and shall respectively give the official bonds required by law.

SEC. 4. If the treasurer or auditor shall perform any official act, before complying with the requirements of the preceding section, he shall forfeit and pay five hundred dollars for the use of the territory.

SEC. 5. The treasurer shall, immediately after his appointment, execute and deliver to the governor a bond to the territory, in the sum of twenty-five thousand dollars, with not less than five securities to be approved of by the governor, conditioned for the faithful performance of all the duties required, or which may be required of him by law; and the auditor shall in like manner execute his bond in a sum not less than ten thousand dollars, with not less than three securities.

SEC. 6. The governor shall endorse on the bond his approval thereof, stating the time of approval, and deliver the same to the secretary of the territory, who shall record, and keep the same in his office.

SEC. 7. No commission shall issue to any auditor or treasurer, until he has given bond and security as required by law.

SEC. 8. The treasurer and auditor shall each keep a seal of office, which shall be used to authenticate all writings, papers, and documents required by law, to be certified from either of said officers, respectively; and copies of all papers and documents lawfully deposited in either of said offices, when certified by the officer, and authenticated by the seal of office, shall be received in evidence in the same manner, and with the like effect, as the original.

ARTICLE II.

Of the Auditor—his general duties.

SEC. 1. The auditor of public accounts is declared to be the general accountant of the territory, and the keeper of all public account books, accounts, vouchers, documents, and all papers relating to the accounts and contracts of the territory; and its revenue, debt, and fiscal affairs, not required by law to be placed in some other office, or kept by some other person.

SEC. 2. It shall be the duty of the auditor to digest, prepare, and report to the legislative assembly at the commencement of each annual session:—

1. A full and detailed statement of the condition of the revenues, and the amount of the expenditures for the last fiscal year.
2. A full and detailed statement of the public debt.
3. Estimates of the revenue and expenditures for the next succeeding year.
4. Such plans as he may deem expedient for the support of public credit; for lessening the public expenses; for using the public money to the best advantage; for promoting frugality and economy in public offices; and generally, for the better management and more perfect understanding of the fiscal affairs of the territory.
5. A tabular statement, showing separately the whole amount of each appropriation of money made by law, the amount paid under the same, and the balance unexpended.
6. A tabular statement, showing separately the amount of money received into the treasury, from all sources, in the preceding fiscal year; the amount received from each county, and each source of revenue in each county.

SEC. 3. It shall be the duty of the auditor:—

1. To audit, adjust, and settle all claims against the territory, payable out of the treasury, except only such claims as may be expressly required by law to be audited and settled by other officers or persons.
2. To draw all warrants upon the treasury for money, except only in cases otherwise expressly provided by law.
3. To express in the body of every warrant which he may draw upon the treasury, the particular fund appropriated by law, out of which the same is to be paid.
4. To audit, settle, and adjust the accounts of all collectors of the revenue, and other holders of public money, who are required by law to pay the same into the treasury.
5. To keep an account between the territory and the territorial treasurer.
6. To keep an account of all debts and credits between the territory and the United States.
7. To direct prosecutions in the name of the territory for all official delinquencies in relation to the assessment, collection, and payment of the revenue, against all persons who, by any means, become possessed

of public money or property, and fail to pay over or deliver the same, and against all debtors of the territory.

8. To procure from the proper officers an abstract and description of all taxable lands within the territory, not yet procured, and annually, hereafter, abstracts and descriptions of such lands as shall become taxable.

9. To transmit to the clerk of each county commissioners' court, annually, a descriptive list of all taxable lands in such county.

10. To give information in writing, to either house of the legislative assembly, whenever required, upon any subject relating to the fiscal affairs of the territory, or touching any duty of his office.

11. To perform all such other duties as may be required by law.

ARTICLE III.

The Auditor—of the settlements of Claims and Accounts.

SEC. 1. All collectors of the revenue, and others bound by law to pay money directly into the treasury, shall exhibit their accounts and vouchers to the auditor, on or before the first Monday in December, in each year, to be audited, adjusted, and settled; and the auditor shall proceed without any unnecessary delay, to audit, adjust, and settle the same, and report to the treasurer the balance found due.

SEC. 2. If any of the persons mentioned in the preceding section, shall fail to pay the amount so found due, into the treasury, and produce the treasurer's receipt to the auditor within ten days after the settlement above required, the delinquent shall forfeit to the territory the amount of his commission allowed him by law; and also two and a half per cent. a month, on the amount wrongfully withheld, to be computed from the time the same ought to have been paid until actual payment; and the auditor shall charge such delinquent accordingly; and the whole amount of principal and forfeiture may be recovered by action on the official bond of the delinquent, or otherwise, according to law.

SEC. 3. All persons having claims against the territory, shall exhibit the same, with the evidence in support thereof, to the auditor, to be audited, settled and allowed, within two years after such claim shall accrue, and not afterwards. And in all suits brought in behalf of the territory, no debt or claim shall be allowed against the territory, as a set-off; but such as have been exhibited to the auditor, and by him allowed or disallowed; except only in cases where it shall be proved to the satisfaction of the court, that the defendant at the time of trial is in possession of vouchers, which he could not produce to the auditor; or that he was prevented from exhibiting the claim to the auditor, by absence from the territory, sickness, or unavoidable accident.

SEC. 4. The auditor, whenever he may think it necessary to the proper settlement of any account, may examine the parties, witnesses and others, on oath or affirmation, touching any matter material to be known in the settlement of such account; and for that purpose may issue writs of summons, and compel witnesses to attend before him, and give evidence in the same manner, and by the same means, allowed by law to courts of record.

Sec. 5. All accounts, vouchers, and documents, settled or to be settled by the auditor, shall be preserved in his office; and copies thereof, authenticated by the official seal, shall be given to any person interested therein who shall require the same.

Sec. 6. In all cases of grants, salaries, pay and expenses, ascertained and allowed by law, found due to individuals from the territory, when audited, the auditor shall draw warrants upon the treasury for the amount, in the form used in the treasury department; but in cases of unliquidated accounts and claims, the adjustment and payment of which are not provided for by law, no warrant shall be drawn by the auditor or paid by the treasurer, unless the previous appropriation shall have been made by law for that purpose; nor shall the whole amount drawn for, and paid under any one head, ever exceed the amount thus appropriated.

Sec. 7. If any person interested, shall be dissatisfied with the decision of the auditor, on any claim, account or credit; it shall be the duty of the auditor, at the request of such person, to refer the same, with the reasons of his decision, to the legislative assembly.

Sec. 8. In all cases where the laws recognize a claim for money against the territory, and no appropriation shall be made by law to pay the same, the auditor shall audit, and settle the same, and give the claimant a certificate of the amount thereof, under the official seal, if demanded; and shall report the same to the legislative assembly, with as little delay as possible.

Sec. 9. The auditor shall report to the legislative assembly, within ten days after the commencement of each regular session, a list of all collectors of the revenue, and other holders of public money, whose accounts remain unsettled for six months after they ought to have been settled, according to law; and the reasons therefor.

Sec. 10. The auditor shall receive an annual salary of dollars, to be audited by the territorial treasurer, and paid by him out of any moneys in the treasury, not otherwise appropriated.

ARTICLE IV.

Of the Treasurer.

Sec. 1. It shall be the duty of the territorial treasurer:—

1. To receive and keep all the moneys of the territory, not expressly required by law to be received and kept by some other person.

2. To disburse the public moneys upon warrants drawn upon the treasury, according to law, and not otherwise.

3. To keep a just, true, and comprehensive account of all moneys received and disbursed.

4. To keep a just and true account of each head of appropriation made by law, and the disbursements under the same.

5. To render his account to the auditor for settlement quarterly, or oftener if required.

6. To report to each house of the legislative assembly, within ten days after the commencement of each regular session, a detailed statement of the condition of the treasury, and its operations for the preceding year.

7. To give information in writing to either house of the legislative assembly, whenever required, upon any subject connected with the treasury, or touching any duty of his office.

8. To perform all such other duties as may be required by law.

Sec. 2. The treasurer shall grant duplicate receipts, under the seal of his office, for all sums of money which shall be paid into the treasury, and the person receiving the same shall deposit one of them with the auditor, who shall credit such person accordingly, and charge the treasurer with the amount.

Sec. 3. The treasurer shall receive as a compensation of his services, one and a half per cent of all moneys received and disbursed by him in his official capacity, to be audited by the auditor, and retained by said treasurer from any moneys in the treasury not otherwise appropriated.

ARTICLE V.

Miscellaneous Provisions.

Sec. 1. In case of death, sickness, absence from the territory, resignation, removal from office, or impeachment of any auditor or treasurer, it shall be lawful for the governor to make an appointment, for the time being, of some suitable person to perform the duties of such office, until a successor can be appointed according to law, or until such absence or disability shall cease.

Sec. 2. Any person appointed by the governor, in virtue of the preceding section, shall receive the same compensation allowed by the law to the officer whose duty he is appointed to perform, in proportion to the time he shall be engaged in such service.

Sec. 3. Immediately after the appointment and qualification of any auditor or treasurer, the legislative assembly, if in session, and if not in session, then the first week of the next session, shall cause settlement to be made in manner above provided, of the former auditor or treasurer's accounts remaining unsettled; and shall cause to be made out and delivered to the person entitled thereto, a certificate of such settlement, showing the balance of moneys, securities, and effects, for which he is accountable, and what has been delivered to his successor.

Sec. 4. The auditor and treasurer shall each have power to administer all oaths and affirmations required or allowed by law, in matters touching the duties of their offices.

Sec. 5. The auditor and treasurer shall have free access to each other's offices, for the inspection of all books, accounts, and papers, which they respectively contain, and free access to all the other offices of the territory, for the inspection of all such books, accounts, and papers, as concern any of their duties.

Sec. 6. The auditor and treasurer shall each keep a letter-book, in which shall be copied all official letters which they may write.

Sec. 7. If the auditor shall knowingly issue any warrant upon the treasury, not authorized by law, he shall, upon conviction thereof, be fined in any sum not exceeding fourfold the amount of such warrant, and imprisoned for any length of time, not exceeding one year; and shall be deemed guilty of misdemeanor in office.

SEC. 8. If the treasurer shall wilfully and unlawfully refuse to pay any warrant lawfully drawn upon the treasury, he shall forfeit and pay to the holder thereof, fourfold the amount of such warrant, to be recovered by action against the treasurer and his securities, on his official bond, or otherwise, according to law; and the treasurer shall be deemed guilty of a misdemeanor in office.

SEC. 9. If the auditor or treasurer shall wilfully neglect or refuse to perform any duty enjoined by law, or shall be guilty of any oppression or extortion in the performance of any legal duty; shall receive any fee or reward for the performance of any legal duty, not allowed by law; or, by color of his office, shall knowingly do any act not authorized by law, or in any other manner than is required by law, he shall forfeit to the territory any sum not exceeding one thousand dollars, and be deemed guilty of a misdemeanor in office.

SEC. 10. The amount of every account audited, adjusted, and found due to the territory, according to this law, with the penalties and interest thereon, is declared to be a lien upon all real estate of the person charged with the same, from the time that suit shall be commenced for the recovery thereof.

OF COUNTY PRISONS, AND THEIR REGULATION.

Sec. 1. The board of commissioners in each county of this territory are hereby authorized, whenever they may deem proper, to erect in such county a jail or prison for the reception and confinement of prisoners and criminals, to be built of such materials and dimensions, and on such place at the seat of justice of such county, as the commissioners may direct; and there shall be constructed in every such jail, one or more cells or dungeons, for the confinement of criminals sentenced to solitary confinement.

Sec. 2. Whenever the commissioners shall determine to erect such jail or prison, they may either receive sealed proposals for the performance of the whole or any part of the work, or for furnishing materials, or may sell the same at public auction to the lowest bidder; but the commissioners, before they enter into any such contract, shall give notice by advertisement, published in some newspaper of general circulation in the county, for at least three weeks in succession, or by putting up advertisements in five public places within the same, three weeks before the time for letting the contract, stating the day on which they will attend at the commissioner's office in said county, for the purpose of receiving proposals, or selling at public auction, (as the case may be) and entering into such contract; and the contractor shall enter into bond, payable to the territory of Oregon, for the use of the county, with such securities, and in such sum as the commissioners shall approve, conditioned for the faithful performance of the contract, agreeably to the stipulations thereof.

Sec. 3. Whenever the commissioners shall determine to erect any jail, the costs of which shall exceed twenty-five hundred dollars, it shall be their duty to make an estimate of the same, and post it upon the door of the court-house in such county, at least twenty-five days before the annual election, and at such election, the qualified electors of such couny shall vote for, or against the erection of such jail, and if a majority of the votes are given in favor of the same, the county commissioners are hereby authorized to levy a tax, sufficient to cover such estimate; and said additional tax shall be assessed, levied, and collected, in the same manner, and at the same time, that the county tax of such county is assessed, levied and collected.

Sec 4. The jails now erected, or which shall hereafter be erected in the several counties of this territory, shall be under the charge of the respective sheriffs, and shall be used as prisons:—

1. For the detention of persons, charged with offences, and duly committed for trial;

2. For the confinement of persons duly committed for any contempt, or upon civil process;

3. For the confinement of persons, sentenced to imprisonment therein, upon conviction for any offence.

Sec. 5. Whenever there is no jail erected in any county, every judicial or other officer of such county, who shall have power to order, sentence, or deliver any person to the county jail, may order, sentence, or deliver such person to the jail of an adjoining county, or if there be no jail erected in any adjoining county, then in the nearest county jail; and the jailor of any such adjoining, or other nearest county, shall receive and keep such prisoner, in the same manner as if he had been ordered, sentenced, or delivered to him by any officer, or court of his own county; but the county from which he was taken shall pay all the expenses of keeping and maintaining him in said jail.

Sec. 6. The county commissioners of each county shall be inspectors of the prisons therein, and shall visit them at least once in each year, and shall examine fully into the condition of such prison as to health, cleanliness, and discipline, and if it shall appear to the said inspectors, that any of the provisions of law have been violated or neglected, they shall forthwith give notice of the same to the district attorney of such district.

Sec. 7. No sheriff, jailor, or keeper of any prison, shall, under any pretence, give, sell, or suffer to be delivered, to any person committed to prison, for any cause whatever, any spirituous, vineous, or malt liquors, unless a physician shall certify in writing, that the health of such prisoner requires it, in which case he may be allowed to give the quantity prescribed, and no more; and if any sheriff, jailor, or keeper, as aforesaid, shall give, sell, or knowingly suffer to be delivered, any such liquors, contrary to the provisions of this section, he shall forfeit for every offence, the sum of twenty-five dollars, to be recovered before a justice of the peace, for the use of the county.

Sec. 8. If any person other than those mentioned in the preceding section, shall sell or give to any person committed for any cause whatever, any liquor prohibited in the last section, or shall have in his possession, in the precincts of any prison, any such liquor with the intent to convey or deliver the same to any prisoner confined therein, he shall forfeit for every such offence the sum of fifteen dollars, to be recovered and applied as in the last preceding section.

Sec. 9. Male and female prisoners (except husband and wife) shall not be kept or put in the same room.

Sec. 10. The keeper of each jail shall furnish, and keep clean, the necessary bedding and clothing for all prisoners in his custody, and shall also supply them with wholesome food, fuel, and necessary medical aid.

Sec. 11. Every sheriff, jailor, and prison keeper within the territory, to whom any person shall be sent, or committed by virtue of legal process, issued by or under the authority of the United States, shall be required to receive such person into his custody, and to keep him safely until he shall be discharged by due course of the laws of the United States; and every such sheriff, jailor, or prison keeper, offending against the provisions of this section shall be liable to the same penalties, and the parties aggrieved shall be entitled to the same redress, against them or any of them, as if such prisoner had been committed to their custody by virtue of legal process issued under the laws of this territory.

SEC. 12. The United States shall be liable to pay for the support and keeping of said prisoners, the same charges and allowances as are allowed for the support and keeping of prisoners committed under the laws of the territory.

SEC. 13. The charges and expenses for safe keeping and maintaining all persons duly committed to the jail of the county for trial, or sentenced to imprisonment in the county jail, or who may be committed for the non-payment of any fine, or for any contempt, shall, unless otherwise provided by law, be paid out of the treasury of the county, the account of the keeper being first allowed by the board of commissioners of the county from which the prisoner was committed.

SEC. 14. The charges and expenses of safe keeping and maintaining all persons sentenced to imprisonment in the penitentiary, after such persons shall be delivered to the warden or keeper thereof, as well as the necessary expenses of conveying such persons to the penitentiary, shall be paid out of the territorial treasury.

SEC. 15. When any poor convict shall have been confined in any jail for the space of twenty days for the non-payment of any fine, and costs only or either of them, the sheriff of the county in which such person shall be imprisoned, shall make report thereof to the commissioners of such county, who may require the keeper of the prison to bring such convict before them, and the commissioners shall proceed to inquire into the circumstances of such convict, and may examine him on oath, and if they shall be satisfied that he has not had, since his conviction, sufficient property to pay such fine and costs, or either of them, they may make a certificate thereof to the sheriff of the county, and direct him to discharge such convict from prison, and the sheriff shall accordingly forthwith discharge him, but such convict shall not thereby be released from the payment of such fine and costs, but the same may be collected by execution at any future time.

Of the relief of persons confined in jail on civil process.

SEC. 16. Every person confined in jail on an execution issued on a judgment recovered in an action wherein the defendant is liable to be arrested, may be discharged therefrom, at the end of twenty days from his first confinement, upon the conditions hereinafter specified.

SEC. 17. Such person shall cause notice in writing to be given to the plaintiff in the suit, his agent or attorney, that on a certain day and hour, and at a certain place, he will apply to a judge of the district court, or two justices of the peace of the county, where the person is committed, stating the names of such judge or justices of the peace, for the purpose of obtaining a discharge from his imprisonment.

SEC. 18. Such notice shall be served by copy on the plaintiff, his agent or attorney, twenty-four hours before the hour of hearing the application, in cases where the plaintiff, his agent or attorney, lives within twenty miles of the place of hearing, and twenty-four hours shall be added to the time for every twenty additional miles, the plaintiff, his agent or attorney, shall reside from that place.

SEC. 19. At the time and place specified in such notice, such prisoner shall be taken, under the custody of the sheriff or jailor, before such judge or justices, who shall examine him on oath concerning his estate and effects, and the disposal thereof, and his ability to pay the judgment for which he is committed; and he or they shall also hear any other legal and pertinent evidence, that may be produced by the plaintiff or defendant.

SEC. 30. The plaintiff in the action may, upon such examination, propose to the prisoner any interrogatories pertinent to the inquiry, and they shall, if required by such plaintiff, be answered in writing, and the answers shall be signed and sworn to by the prisoner.

SEC. 21. If the judge or justices, upon such examination, shall be satisfied that the prisoner has not any real or personal property, conveyed, concealed, or in any way disposed of, with a design to secure the same to his own use, or to defraud his creditors, he or they shall administer to him the following oath; to wit:—

"I, C.D., do solemnly swear that I have not any estate, real or personal, to the amount of twenty dollars, except such as is by law exempt from being taken in execution, and that I have not any other estate now conveyed, or concealed, or in any way disposed of with design to secure the same to my use, or to defraud my creditors—So help me God."

SEC. 22. After administering the oath, the judge or justices shall make a certificate, under his or their hands, as follows:—

"The undersigned, a judge of the district court (or two justices as the case may be), hereby certifies that C.D., confined in your jail upon an execution, at the suit of A.B., is entitled to be discharged from imprisonment if he be imprisoned for no other cause."

SEC. 23. The jailor, upon receiving such certificate, shall forthwith discharge the prisoner, if he be detained for no other cause.

SEC. 24. If such judge or two justices should not discharge the prisoner, he shall be entitled to apply for his discharge at the end of every succeeding twenty days, in the same manner as above provided, and the same proceedings shall thereupon be had.

SEC. 25. The prisoner, after being so discharged, shall be forever exempted from arrest or imprisonment for the same debt, unless he shall be convicted of having wilfully sworn falsely upon his examination, before the judge or two justices, or in taking the oath before prescribed.

SEC. 26. The judgment against any prisoner who is discharged as aforesaid, shall remain in full force against any estate which may then, or at any time afterwards, belong to him, and the plaintiff in the action may take out a new execution against the goods and estate of the defendant, in like manner as if he had never been committed on the execution.

SEC. 27. If the defendant shall undertake to satisfy the execution, he shall not be entitled to his discharge until he has paid all the charges for his support in prison, in addition to the sum due on the execution, and the cost and charges thereon.

Sec. 28. The plaintiff in the action may, at any time, order the prisoner to be discharged, and he shall not thereafter be liable to imprisonment for the same cause of action, but the judgment against such prisoner shall remain in full force against any estate which may then or afterwards belong to such discharged defendant.

OF ARBITRATIONS.

SEC. 1. All controversies which might be the subject of a personal action at law, or of a suit in equity, may be submitted to the decision of one or more arbitrators, in the manner provided in this chapter.

SEC. 2. No such submission shall be made respecting the claim of any person to any estate in fee or for life to any real estate, but any claim to an interest for a term of years, or for one year or less in real estate, and controversies respecting the partition of lands between joint tenants or tenants in common, or concerning the boundaries of lands, or concerning the admeasurement of dower, may be submitted to arbitration; but nothing in this chapter contained shall preclude the submission, and arbitrament of controversies according to the common law.

SEC. 3. The parties may appear in person or by their lawful agents, or attorneys, before any justice of the peace or clerk of the district court, and there sign and acknowledge an agreement in substance as follows:—

"Know all men that A.B., of , and C.D., of , have agreed to submit the demand, a statement whereof is hereto annexed, (and all other demands between them, as the case may be) to the determination of , and ; the award of whom, or the greater number of whom being made and reported within days, from this date, to the district court for the county of , shall be final; and if either of the parties shall neglect to appear before the arbitrators, after due notice given them of the time and place appointed for hearing the parties, the parties may proceed in his absence.

Dated this day of , A.D. 185 .

A.B.
C.D."

And the justice or clerk shall subjoin to the said agreement his certificate, in substance as follows:—

Territory of Oregon, } ss.
County of }

Personally appeared before me, the above-named A.B. and C.D., (or personally appeared the above-named A.B., and the said C.D., by his attorney, as the case may be,) and acknowledge the above instrument by them signed, to be their free act.

Dated this day of 185 .

J.P.,

Justice of the peace.

SEC. 4. If any specific demand be submitted to the exclusion of others, the demand submitted shall be set forth in the statement annexed to the agreement of submission, otherwise it shall not be necessary to annex any statement of a demand, and the words in the agreement relating to such statement may be omitted, and the submission may then be of all demands between the parties, or of all demands which either of them has against the other, or the submission may be varied in this respect, in any other manner, according to the agreement of the parties.

SEC. 5. Neither party shall have power to revoke a submission, made as herein provided, without the consent of the other; and if either of them shall neglect to appear before the arbitrators, after due notice, the arbitrators may, nevertheless, proceed to hear and determine the cause upon the evidence, produced by the other party, as provided in the agreement of submission.

SEC. 6. The arbitrators thus selected shall appoint a time and place for the hearing, and shall adjourn the same from time to time, as may be necessary; and on the application of either party, and for good cause, they may postpone such hearing to a time, not extending beyond the day fixed in such submission for rendering their award.

SEC. 7. Before proceeding to hear any testimony, the arbitrators shall be sworn by any officer, authorized to administer oaths, faithfully and fairly to hear and examine the matters in controversy, and to make a just award according to law and evidence, to the best of their understanding.

SEC. 8. The time, within which the award shall be made and reported, may be varied according to the agreement of the parties; and no award made after the time so agreed upon shall have any legal effect or operation, unless made upon a recommitment of the award by the court to which it is reported.

SEC. 9. To entitle any award to be enforced according to the provisions of this chapter, it must be in writing, and subscribed by the arbitrators making the same.

SEC. 10. The award shall be delivered by one of the arbitrators to the clerk of the district court, designated in the agreement of submission, or shall be inclosed and sealed by them and transmitted to the clerk, and shall remain sealed, until opened by such clerk.

SEC. 11. The court to which the award is returned shall have cognizance thereof in the same manner, and the same proceedings shall be had thereon, as if it had been made by referees, appointed by a rule of the same court.

SEC. 12. The award may be rejected by the court for any legal and sufficient reason, or it may be recommitted to the same arbitrators, for a re-hearing by them; and when an award is accepted and confirmed by the court, judgment shall be rendered thereon, in the same manner as upon a like award made by referees appointed by a rule of the court, and execution shall issue accordingly.

Sec. 13. Any party complaining of such award may move the court, designated in such submission, to vacate the same upon either of the following grounds:—

1. That such award was procured by corruption, fraud, or other undue means;

2. That there was evident partiality or corruption in the arbitrators or either of them;

3. That the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or other misbehavior by which the rights of such party shall have been prejudiced;

4. That the arbitrators exceeded their powers, or that they so imperfectly executed them, that a mutual, final, and definite award on the subject matter submitted was not made;

5. That the award was contrary to law and evidence.

Sec. 14. Any party to such submission may also move the court, designated therein, to modify or correct such award in the following cases:—

1. When there is an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property, referred to in such award;

2. Where the arbitrators shall have awarded upon some matter not submitted to them, nor affecting the merits of the decision upon the matters submitted;

3. Where the award shall be imperfect in some matter of form not affecting the merits of the controversy, and where if it had been a verdict, such defect could have been amended or disregarded by the court, according to the provisions of law.

Sec. 15. The award may be returned at any term or session of the court, that shall be held within the time limited in the submission; and the parties shall attend at every such term or session, without any express notice for that purpose, in like manner, as if an action for the same cause were pending between them in the same court; but the court may require actual notice to be given to either party, when it shall appear to them necessary or proper, before they proceeded to act upon the award.

Sec. 16. Upon such award being confirmed or modified, the court shall render judgment in favor of the party, to whom any sum of money or damages shall have been awarded, that he recover the same, and if the award shall have ordered any act to be done by either party, judgment shall be entered that such act be done according to such order. The costs of proceedings shall be taxed as in suits, and if no provision for the fees and expenses of the arbitrators shall have been made in the award, the court shall make a suitable allowance.

Sec. 17. A record of such judgment shall be made, commencing with a memorandum reciting the submission, then stating the hearing before the arbitrators, their award, the proceedings of the court thereupon, in modifying or confirming such award, and the judgment of the court for the recovery of the debt or damages awarded, or other act to be done, and that the parties perform the acts ordered by the award, and for the recovery of the costs allowed.

SEC. 18. Such record shall be filed and docketed as records of judgments in other cases; shall have the same force and effect in all respects; be subject to all the provisions of law in relation to judgments in actions, and may in like manner be moved and reversed by writ of error or appeal, and execution shall issue thereupon.

SEC. 19. If there be no provision in the submission concerning the costs of the proceedings, the arbitrators may make such award respecting the costs as they shall judge reasonable, including therein a compensation for their own services; but the court may reduce the sum charged for the compensation of the arbitrators, if it shall appear to them unreasonable.

SEC. 20. Where by such judgment any party shall be required to perform any act, other than the payment of money, the court rendering such judgmant shall enforce the same by rule; and the party, refusing or neglecting to perform and execute such act, or any part thereof, shall be subject to all the penalties of contemning an order of such court.

SEC. 21. The arbitrators shall hear and receive the testimony of either party under oath; and shall have full power to administer all necessary oaths to parties, or witnesses appearing before them; and any such party or witnesses swearing wilfully and corruptly false, on any such hearing or examination, seall be deemed guilty of perjury.

OF BILLS OF EXCHANGE AND PROMISSORY NOTES.

Sec. 1. All notes in writing made and signed by any person, whereby he shall promise to pay to any other person or his order, or unto the bearer, any sum of money therein mentioned, shall be due and payable as therein expressed, and shall have the same effect, and be negotiable in like manner as inland bills of exchange, according to the custom of merchants.

Sec. 2. Every note signed by the agent of any person, under a general or special authority, shall bind such person, and have the same effect, and be negotiable as provided in the preceding section.

Sec. 3. The payees and endorsees of every such note payable to them or their orders, and the holders of every such note payable to bearer, may maintain actions for the sums of money therein mentioned, in like manner as in cases of inland bills of exchange, and not otherwise.

Sec. 4. Such notes made payable to the order of the maker thereof or to the order of a fictitious person, shall, if negotiated by the maker, have the same effect, and be of the same validity as against the maker, and all persons having knowledge of the facts, as if payable to bearer.

Sec. 5. On all bills of exchange payable at sight, or at a future day certain within this territory; and on all negotiable promissory notes, orders, and drafts payable at a future day certain within this territory, in which there is not an express stipulation to the contrary, grace shall be allowed, except as provided in the following section, in like manner as it is allowed by the custom of merchants on foreign bills of exchange, payable at the expiration of a certain period after date, or at sight.

Sec. 6. The provisions of the last preceding section shall not extend to any bill of exchange, note, or draft, payable on demand.

Sec. 7. No person within this territory shall be charged as an acceptor of a bill of exchange, unless his acceptance shall be in writing, signed by himself, or his lawful agent.

Sec. 8. Whenever any bill of exchange, drawn or endorsed within this territory, and payable without the limits of the United States, shall be duly protested for non-acceptance, or non-payment, the party liable for the contents of such bill shall, on due notice and demand thereof, pay the same at the current rate of exchange at the time of the demand, and damages at the rate of ten per cent. upon the contents thereof, together with interest on the said contents, to be computed from the date of the protest; and said amount of contents, damages and interest shall be in full of all damages, charges and expenses.

Sec. 9. If any bill of exchange, drawn upon any person, or body politic or corporate out of this territory, but within some state or territory of the United States, for the payment of money, shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment, the drawer or indorser thereof, due notice being given of such non-acceptance, or non-payment, shall pay said bill with legal interest, according to its tenor., and five per cent. damages, together with costs and charges of protest.

OF NOTARIES PUBLIC.

Sec. 1. The governor shall appoint, in each of the organized counties in this territory, one or more notaries public, who shall be considered territorial officers, and shall hold their offices for the term of two years, unless sooner removed by the governor, and who shall have power to act by virtue of their office throughout the territory.

Sec. 2. Each and every notary public, before he enters upon the duties of his office, shall take an oath to support the constitution of the United States, and for the faithful discharge of the duties of his said office, and shall give a bond to the governor with sufficient surety, in the penal sum of five hundred dollars, conditioned for the discharge of the duties of his said office—*Provided,* that nothing in this article shall be construed to remove notaries public now in office.

Sec. 3. Whenever the office of any notary public shall become vacant, the records of said notary public, together with all the papers relating to the office, shall be deposited in the office of the clerk of the district court in the county in which the said notary public resides; and any notary public, who, on his resignation or removal from office, shall neglect to deposit such records and papers in the clerk's office as aforesaid for the space of three months, shall forfeit and pay a sum not less than fifty, nor more than five hundred dollars; and if any executor, or administrator of any deceased notary public, shall neglect to lodge such records and papers as aforesaid, which come into his hands, in the clerk's office for the space of three months after the acceptance of that trust, he shall forfeit and pay a sum not less than fifty, nor more than five hundred dollars; and if any person shall knowingly destroy, deface, or conceal any records or papers of any notary public, he shall forfeit aud pay a sum not less than fifty, nor more than five hundred dollars, and shall be moreover liable to an action for damages by the party injured.

Sec. 4. It shall be the duty of each and every notary public, when any bill of exchange, promissory note, or other written instrument, shall be by him protested for non-acceptance or non-payment, to give notice thereof to the maker, and each and every endorser of a bill of exchange, and to the maker or makers of, and each and every security or endorser of any promissory note, or other written instrument, immediately after such protest shall have been made.

Sec. 5. It shall be the duty of every notary public personally to serve the notice upon the person or persons protested against—*Provided* he or they reside within two miles of the residence of such notary public; but if such person or persons reside more than two miles from such residence, the said notice may be forwarded by mail or other safe conveyance.

SEC. 6. Each and every notary public shall keep a record of all such notices, and of the time and manner in which the same shall have been served, and of the names of all the parties to whom the same were directed, and the description and amount of the instrument protested; which record shall at all times be competent evidence to prove such notices, in any trial before any court in this territory, where proof of such notice may become requisite.

SEC. 7. It shall be the duty of the several clerks of the district courts to receive, and keep safe all the records and papers, directed by this chapter to be deposited in their office, and give attested copies of any of said records or papers when required, and copies so given by the said clerk are hereby declared to be as valid, as if the same had been given by the said notaries public. All forfeitures under this chapter shall be, one half to the use of this territory, and the other half to him or them, who shall sue for the same; to be recovered in a civil action in any court having jurisdiction of the same, in the county where such notary public shall reside.

SEC. 8. Every notary public, before he enters upon the duties of his office, shall provide an official seal, and deposit an impression of the same, together with said oath and bond in the office of the secretary of the territory.

SEC. 9. Notaries public shall have full power and authority to take acknowledgements of deeds, and to administer oaths in all cases where oaths are required by law to be made.

SEC. 10. Full faith and credit shall be given to all the protestations, attestations, and other instruments of publication of all notaries public, now in office or hereafter to be appointed under the provisions of this chapter.

A CARD.

To the Legislative Assembly:

WE, the commissioners elected to prepare a code of laws for Oregon Territory, respectfully report, that shortly after the close of the last session of the Legislature we entered upon the discharge of the duties imposed upon us by the act creating the board of commissioners, and we now submit the foregoing compilation as the result of our labors. We are well aware that in a work of this magnitude, prepared as it was in the brief space of time that elapsed between the last and the present session of the Legislature, many errors and imperfections must necessarily exist. We ask, however, that it may receive the careful and candid consideration of the Legislative Assembly at its present session, and if approved, that it may be adopted with such amendments as may be thought proper.

In preparing this compilation we were of opinion that the act creating the board of commissioners, did not simply authorize us to make a revision of the statutes now in force, but that it required us to prepare a full and complete code. The present report is designed to accomplish this end, and to substitute a uniform and connected system of statutory laws for the confused and uncertain one that now exists in the territory.

It will be perceived upon an examination of our report that we have adopted some of the statutes now in force; others have been very materially changed, and not a few have been wholly supplied. To point out all the alterations and additions which we have made, or to give the reasons therefor, would be quite impossible unless at very great length. We have therefore concluded to submit the code which we have prepared without making any further remarks upon it, trusting that upon a close examination it will be found such as the Legislative Assembly may approve and adopt.

All which is respectfully submitted,

JAMES K. KELLY,
D. R. BIGELOW,
R. P. BOISE.